EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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CYTIVA SWEDEN AB and GLOBAL LIE SCIENCES SOLUTIONS USA LLC,	:	**CIVIL ACTION**
Plaintiffs,	:	
vs.	:	
BIO-RAD LABORATORIES, INC.,	:	
Defendant.	:	**NO. 18-1899-CFC-SRF**

- - -

Wilmington, Delaware
Wednesday, September 2, 2020
2:00 o'clock, p.m.
*****Telephone conference**

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BEFORE: HONORABLE SHERRY R. FALLON, U.S. MAGISTRATE JUDGE

- - -

APPEARANCES:

SHAW KELLER LLP
BY: JOHN W. SHAW, ESQ.

-and-

Valerie J. Gunning
Official Court Reporter

APPEARANCES (Continued):

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P R O C E E D I N G S

(The following telephone conference was held beginning at 2:00 p.m.)

THE COURT: Good afternoon, everyone. This is Magistrate Judge Sherry Fallon.

This is the time I have set aside for a discovery dispute teleconference in Cytiva Sweden and Global Life Sciences Solutions versus Bio-Rad Laboratories.

Let me first find out, do we have a court stenographer?

MS. GUNNING: Yes, Your Honor. It's Valerie Gunning.

THE COURT: Thank you, Ms. Gunning.

And do I have my law clerk, Ms. Polito?

MS. POLITO: Good afternoon, Your Honor. I'm on the line.

THE COURT: Okay. Do we have a fall intern joining us? Do you know, Ms. Polito, if we'll be joined by our intern or probably not?

MS. POLITO: I don't think she's on the line today.

THE COURT: All right. Very well.

Then let me start with the appearances of

counsel, starting with Delaware counsel for the plaintiff and then plaintiffs' counsel, and then the same for defendant.

Who is on the line for the plaintiffs?

MR. SHAW: Good afternoon, Your Honor. This is John Shaw for the plaintiffs, and joining me from Arnold & Porter are Jennifer Sklenar, Amy DeWitt, Brian Nishimoto, and Michael Sebba.

THE COURT: Very good. Thank you.

And now for Bio-Rad, who is on the line?

MR. SILVERSTEIN: Good afternoon, Your Honor. This is Alan Silverstein from Potter Anderson.

With me on the line is David Bilsker and Felipe Corredor from Quinn Emanuel.

THE COURT: Very good. And do we have anyone else observing or listening to the proceedings who have not yet identified themselves for our transcript?

Hearing none, we will begin.

This is Bio-Rad's motion to compel. There are three different issues that were raised in the motion. I have read the motion, the response and the exhibits, and I am ready to proceed.

We'll start with the first issue, the supplemental interrogatory that was made by the plaintiffs with respect to conception and reduction to practice,

the supplemental response to Bio-Rad's Interrogatory Number 1.

Who will take the lead for Bio-Rad?

MR. BILSKER: It's David Bilsker, Your Honor. I will.

THE COURT: All right. Before you begin, Mr. Bilsker, you're sounding a bit like you're in an echo, so maybe you can move back.

MR. BILSKER: Is this better?

THE COURT: That's better.

MR. BILSKER: Okay.

THE COURT: And I would instruct that anyone who is not speaking to please put your microphone on mute so that there is no background noise or interference. So with that, you may proceed.

MR. BILSKER: So, Your Honor, this is a unique situation, and I don't think it's covered by any of the cases that plaintiff is relying on. And it may make more sense for me to actually address their cases because they're really factually distinguishable.

So we have the situation where we have an interrogatory outstanding for almost a year or more than a year. We finally got a response to it. We created a litigation strategy. We went forward on that strategy. We essentially completed all of our depositions and then seven

days before the close of fact discovery, after all of those depositions, we get a completely changed response.

So, and really, the justification for it, I'm not sure exactly what plaintiffs are speaking of because they say the justification was created by argument that we made, and I'm not aware of any arguments that we made with respect to conception and reduction to practice, so that justification really does not exist.

As to the other justification that they come up with, they say it's based on what happened during the depositions, but essentially, what they are asking for is a do-over. They did not like -- apparently, they did not like what happened during the depositions and they decided a month after, apparently a month after the 30(b)(6) deposition that they, I guess they think changed everything, that they were going to change their theory.

And, again, this is not, this is not the kind of situation that Rule 26 really contemplates. Rule 26, and when you look at all of their cases, deals with situations where essentially a new fact, a fact has arisen that makes a response not correct.

So, for instance, I don't know. You know, if it was a malpractice case and somebody said that people 1 through 6 were in the operating room and they find out after looking at charts that, in fact, 1 through 6 were not in the

operating room, only 1 through 5 were, then they can correct that fact. And that's essentially what happened with respect to all of these cases that they rely on. There were newly discovered facts. But that's not the situation here. All the facts were in plaintiffs' possession. You had an interrogatory outstanding for over a year. This is, you know, a relatively standard question in many pieces of patent litigation, what is your conception and reduction to practice date? That's something that, you know, we had to do the same thing.

They served an interrogatory on us that was the same. We did an investigation. We talked to witnesses. We looked at our documents and we identified those dates and we stuck with them.

They, on the other hand, are basically saying, well, they did some investigation, but after, you know, after Bio-Rad probed the theory that they put out, they didn't like it so much anymore, so it's okay for them to completely change everything at the end of discovery and go forward.

So, for example, if you look at the Webex case that they heavily rely on, in that case what the Court found was it was reasonable for the, and I believe it was, it was for the plaintiff to identify additional product that was charged with infringing.

Now, plaintiff actually argued that it was disclosed all along and they added more information after the defendant supplied the source code, which the Court actually agreed with. So that's a situation, as I said before, where new facts have come to light and you add in more information based on those facts.

The plaintiff in that situation did not have the source code, and after they received the source code, they supplemented their, you know, their infringement contentions to include that additional source code and more specifically identify the product.

And, in fact, in that case, really what the parties were arguing about was on a 30(b)(6) deposition which had not yet occurred, would that deposition include this new, this one new product? That's not the situation we have here. All the depositions are over and their change in theory came after we had taken all of our depositions. And it's not just one deposition that we took that's relevant. There were at least four or five depositions that related to conception. There was Matt Souderman, Eva Harland, Mats Lundkvist, who was the inventor and the 30(b)(6), and there were some depositions that we decided not to take after the testimony that we got.

So this is not, this is not the situation which is existing in all the cases that they rely on, which is

some new fact. And if it's going to be prejudicial to us, absolutely. We have a litigation strategy and theory that we focused on, including not taking some of the depositions, and it's, again, it's not just one, it's multiple depositions.

There's no explanation for why this occurred so late in the process. Again, you know, this is, this is not a fact. This is a legal theory. It's a contention-type response which usually in Delaware occurs at the end of the case because it gives the parties time to research all of the facts and put together the facts with a legal theory to come up with a response.

So, you know, basically, what I'm hearing is, it's either one of two things. They just didn't do a good job when they, when they reviewed the facts and talked to the witnesses before, if they talked to them at all before coming up with a conception date or, worse, it's just they want a do-over.

The strategy didn't pan out well for them. Now they don't like it and they just want a change. And they are saying there's really no harm to Bio-Rad because we've got 40 days here before, you know, the end of expert discovery. We can fit things in. Our expert reports are due very shortly.

They -- it was plaintiffs who really wanted to

push on a fast discovery schedule. When Covid hit and we were having some issues with respect to what the schedule should be, we actually discussed extending discovery by a certain amount of time and we could not get plaintiff to agree to go past July 31st, and even with July 31st, we had to agree that there would be no more written discovery submitted.

So the discovery deadline is important and, in fact, it's plaintiffs who relied on that deadline very heavily in saying, you know, it has to be -- everything has to be done by this date, we're not going to allow any more written discovery, although I do admit that they said if a couple of depositions have to go over because of scheduling, we can do -- we can do that.

But this is not going to be a single deposition that would have to be redone. It would be many depositions. It would be a total change in our theory in the way we approach this issue.

We already set ourselves -- we already planned our strategy. We, you know, identified our dates, presented our evidence, and there's no reason that they should change. It's just, there's no new discovery of any facts. We made no new arguments despite their, their indications to the Court otherwise, and if, in fact, something came up in a deposition, those depositions started June 18th, and the

last one was June 26th, and it wasn't until July 24th, I believe, that we got the notice that they were changing the response completely, which was one week before the close of fact discovery.

So even when they proposed the issue about, well, you can take more depositions, the only way we could take more depositions is by going past the discovery deadline, which is not really what happened in any of the cases that they rely on.

So unless Your Honor has any further questions, I will end it there.

THE COURT: All right. A couple of questions.

So you said in your papers, although I have not heard it on the call, and naturally, you know, it's in your papers and I've read your papers, but the Court has to be guided by the Pennypack factors in considering whether to strike or to exclude the evidence.

What other Pennypack factors other than the prejudice which you've described as, you know, requiring a change in defendant's theory of the case, what other Pennypack factors are affected or weigh in favor of your client, Bio-Rad, in light of this change, move up by about a year the dates of conception and reduction to practice?

MR. BILSKER: Well, first, I do want to point out that in this circuit, courts have held that you do not

actually have to abide by the Pennypack factors when you have sophisticated parties, and that's in one of the cases that Cytiva, plaintiff, cited. That's in the Teva Pharmaceuticals case at *3 where they say, when you have sophisticated parties represented by competent counsel, courts have been less indulgent in their application of the Pennypack factors and more likely to exclude evidence without a strict showing of adherence to those factors.

Certainly, I think this is a situation where we have sophisticated parties and sophisticated counsel, and when you look at Pennypack and -- well, Pennypack was a Civil Rights case from the 1970s under a -- I'm not even sure if Rule 26 was the same at the same time. The case was published in '77. So I'm not even positive that the same, the same rule is in effect. But, again, according to courts in this district, you don't have to abide by those factors when you have sophisticated parties.

As far as the other Pennypack factors, I think the first thing you have to look at is whether the harm is going to be, or the change is going to be harmless. That's what really is guiding everything and I don't think the change here is harmless.

We created a strategy, and now based on that strategy and them apparently thinking that their position is a loser, they want to change everything. So that is not

harmless to us after having created that strategy, them getting to change. So that is one.

The prejudice certainly works in our favor. There is -- there very well may be a disruption of the trial. We have expert reports starting in, I think they are due in two weeks. Is that correct, Mr. Corredor?

MR. CORREDOR: Yes. Next Friday.

MR. BILSKER: So the expert reports are due next Friday. Obviously, we would have to go forward with expert discovery depositions there. It's going to throw off that schedule completely.

As to the possibility of curing the prejudice, I don't think there is a way to cure the prejudice. Just by allowing us to take more depositions doesn't cure the prejudice when we embarked on a litigation strategy based on what they said.

So just allowing us to take depositions, it's kind of like showing -- you know, you're playing poker. It's like one party shows their hand and then the other side decides what they are going to do, and that's just not the way it works.

You know, and one very good example of that is when you're in the Patent Office and you do an interference proceeding with this type of situation where both parties are alleging that they invented first. And the Patent

Office, where they do this all the time, they require both parties to essentially submit sealed bids. You have to submit your dates and evidence without the other side seeing them. So there is no gamesmanship like is going on here. So I don't think there is a way to cure it.

And then as to the explanation or failure to disclose, I don't think there's any explanation at all. I mean, what they said is, based on argument by Bio-Rad, so that's what they say is Cytiva investigated based on Bio-Rad's arguments and deposition testimony as parties are expected to do.

Again, there's no argument. We didn't have any opportunity to argue about conception or reduction to practice. We were just in discovery. So there's no argument that we made that would justify them changing their position.

And as for the deposition testimony, that doesn't justify it either. These are all their witnesses. They should have, they should have interviewed these witnesses before they came up with their date, which is exactly what we did. We didn't just make them up and then hope for the best. You interview the witnesses, you look at the documents and you come up with a date.

So there's really no good explanation of that. I don't think it is plausible. I know it's not plausible

with respect to the argument. There was no argument. So that factor does not weigh in their favor.

And then I think that the last factor, which is bad faith, I kind of think that goes along with the prior one, which is their explanation is not an explanation at all if there was no argument, and the idea that they found out information at the deposition of their own witnesses who they prepared for the deposition.

So they prepared fact witnesses for the deposition. They certainly prepared the 30(b)(6) witness for the deposition. Nothing changed before that. There's not good faith there. It's only based on the fact that we apparently did too good a job during the deposition and blew up their theory that they wanted to change.

So I think all of the factors weigh in our favor, Your Honor.

THE COURT: Just one other question before I hear from plaintiff. Along with supplementing their response to Interrogatory No. 1, they provided a list of documents for I guess factual support of that theory, and is it correct that these documents had been already produced in discovery and defendants had them for several months, notwithstanding the express listing of them in support of the supplemental response?

MR. BILSKER: Well, it is true that we had the

documents along with hundreds of thousands of other documents, but there's no way for us to go in there and decide for them which documents are going to be used to support a theory of conception. I mean, that's kind of beyond, you know, beyond reason to say, here's a bunch of documents. You figure out what our conception date is going to be. And since you have the documents, there's no prejudice in you doing that. I mean, that goes right to the RTC case that we cited.

It's just not a reasonable position. You can't, you can't produce hundreds of thousands of documents to people and say, you figure out what the conception and reduction to practice date is and which documents the plaintiff is going to use to support that.

We asked them very specifically which documents are you going -- which documents are you going to use to support it. There were hundreds to start out with, more than hundreds that appeared to relate to a prototype, and they only relied on some small subset of that. And in their new response, they basically jettisoned the majority of those original documents, and they go to whole different subsets.

So it's like, it's like two different cases now. And, you know, if they are going to put on us that, oh, there's no prejudice because you had the documents, well,

they're their documents. How are we in a better position to figure out what their conception and reduction to practice date is based on a pile of documents they dump on us than they are when they're their documents and they can interview the witnesses to figure out what their conception date is going to be based on those documents.

Again, this is not like something that happened spur of the moment. This case has been going on for six years, and that interrogatory was out there for more than a year before they finally responded. So they had more than ample time to look through those documents in their possession, talk to their witnesses about those documents, and come up with real dates and which documents would support this.

To put it on us is crazy.

THE COURT: All right. I will hear from plaintiff now.

MR. NISHIMOTO: Good afternoon, Your Honor. This is Ryan Nishimoto from Arnold & Porter.

THE COURT: Thank you.

MR. NISHIMOTO: And, Your Honor, I apologize. If I cut out, please do interrupt me. I'm dealing with school kids in the area that are on Zoom, and my understanding is they are now off of Zoom but it has affected my bandwidth this morning. Hopefully, that won't

be an issue.

THE COURT: All right. We'll keep an eye on it. Thank you.

MR. NISHIMOTO: Let me start by addressing Mr. Bilsker's point that his observation that this issue is not covered by any of the cases that Bio-Rad found in his argument, which is not covered by the cases that Cytiva introduced through its brief. And I think that's important to keep in mind, that this is Bio-Rad's burden, and they are seeking to strike a supplemental discovery response that was provided within the fact discovery period in response to information that came to light during the fact discovery period, and yet Bio-Rad seems to be arguing that because there's no case that allows them to do that, they nevertheless should be allowed to strike.

The observation also that parties change their positions based on discovery that comes to light is something that happened quite frequently in litigation, and here, I know Mr. Bilsker had pointed to several statements that Cytiva had made in its brief that based upon the information that came to light in discovery, this is why Cytiva gave its supplemental response.

Let me just provide an example. So, for example, during the deposition of Mr. Lundkvist, who is one of the two named inventors, questioning came out as to

whether the modules on what's called the P0 prototype were moveable came to light during that deposition, and there was some question as to whether, in fact, they are moveable, and that is the key aspect of the invention in this case. And that's one example of something then that Cytiva went back to look into following that deposition, and based on that has then moved the conception and reduction to practice date forward, and those dates then relate to a later prototype, a P1 prototype, and, in fact, that prototype was mentioned during, for example, the deposition of Mr. Lundkvist.

So I think it's important to contextualize, one, that the relief that Bio-Rad is seeking here is not covered by the case law. What they are seeking is to strike information that was supplemented during discovery, and this is not something that has been sprung on Bio-Rad. The information has been in their possession for quite some time, and it is based upon information that came to light during the discovery period and it was supplemented during the discovery period.

To the point of prejudice, and I think it is important to keep in mind that the Pennypack factors here are relied on in each of the cases I believe that Cytiva cites. Pennypack factors are also addressed in Bio-Rad's brief. Two of those factors go to prejudice.

It was important to us to make sure that we offered Bio-Rad a chance to ameliorate any prejudice that they allege, and this was during the fact discovery period, and at that time that we supplemented the interrogatory response, there was seven weeks remaining until expert reports were due.

So the argument that today, as we sit here today, there's less time, two weeks before the expert reports are due doesn't fully capture the opportunity that Bio-Rad had and what we offered to them by way of helping hear any prejudice that they had been able to articulate.

Now, what I heard today then on the question of litigation strategy, we've heard a number of comments that Bio-Rad developed a litigation strategy, but there has been no explanation of what that is. And it would concern me, and I have not seen cases to this effect, that any party could say we've developed a litigation strategy, including during the fact discovery period, and it forecloses the other side from supplementing or correcting its Rule 26 disclosures or its interrogatory responses based on an unarticulated litigation strategy that the other side had developed and was hoping to pursue, but is no longer able to.

And I inflect able to as a question because I want to go back to the point that, again, these dates have

been moved forward. This is not a situation that is reflected in the case law where the patentee is trying to get around prior art by moving dates earlier and a late disclosure on an earlier conception or a late disclosure of an earlier reduction to practice. We agree, there are questions about the initial 2005 dates that were in our first supplemental response. That's why we have moved those dates forward.

It would be unusual to me to be in a position where the patentee in this case is precluded from arguing a later conception and reduction to practice date and instead be forced to argue an earlier conception and reduction to practice date that is no longer what we believe accurately reflected in the evidence.

THE COURT: All right. Thank you.

Any rebuttal, Mr. Bilsker? Are you on mute, Mr. Bilsker? The Court can't hear you.

MR. BILSKER: I'm sorry. I'm sorry.

THE COURT: That's okay.

MR. BILSKER: Mr. Nishimoto mentioned the very first issue, which was after the deposition, they heard the testimony and they realized that maybe the prototype P0 didn't have moveable modules. Well, that does not show good faith and it's not a reasonable excuse.

Interchangeable modules have been at the center

of this case since it was first filed six years ago. It's a limitation that's in every single claim, interchangeable modules, and to say you didn't think about whether the prototype had interchangeable moveable modules until after the deposition is just not, it's not plausible.

Obviously, if you're relying on something for your conception, and they questioned our witnesses heavily about this, did you have a complete idea of the claimed invention? Well, if the prototype you're relying on for conception or reduction to practice doesn't have the key element of the invention, that's a pretty big issue. That's not something that just like slips by.

And if you did anything that was reasonable in coming up with your initial response, you have all the information. You know what the limitations of the claim were. There's nothing new. There's nothing new other than maybe you didn't do your job.

And, again, that's not, that's not the basis for amending and completely changing your theory. It's not a new fact. And you didn't hear Mr. Nishimoto say anything about what the argument that they put in the brief to you was. There was no argument that changed anything, and the new evidence again, the "new evidence" is just testimony coming from their own witnesses that they should have done beforehand. So that's one point.

The second point, which is this issue about, well, they are moving the date later, not earlier, so that makes all the other cases where people try to move back to get around prior art inapplicable, no, it doesn't. The change, when people make a change, they are making a change to basically save their patent. Here, they picked a conception and reduction to practice date that was early. They know now that they're going to lose, so they want to change.

So moving it one way or the other is not the relevant thing. The relevant thing is, they need to change because they're going to lose based on what they have, which is exactly the same as people who change by moving it back because they see there's a piece of prior art that's going to kill them. So it's exactly the same thing and it's identical to the RTC case, which is the only case that Your Honor has which involved conception and reduction to practice.

So that's it unless you have further questions.

THE COURT: No further questions at this time, and I am prepared to make a ruling on this issue. The transcript will serve as the order of the Court. I will not be issuing anything in writing subsequent to this hearing, so the transcript will serve as the order, and any party who wishes to take objections to my ruling may do so and Judge

Connolly will review my order to determine whether it's clearly erroneous or contrary to law and the time requirements under Rule 72(a) for taking objections to nondispositive motions will govern.

With respect to defendant's motion to strike plaintiffs' supplemental response to Interrogatory Number 1, that motion is denied. It's undisputed that on July 24th, 2020, one week prior to the close of fact discovery and after the conclusion of fact witness depositions, the plaintiff filed its supplemental interrogatory response moving ahead by nearly a year the date it contends each asserted claim of the patents-in-suit were conceived and reduced to practice.

It is further undisputed that the documents identified in support of the supplemental response were not newly discovered and had earlier been produced in the litigation, albeit not matched up with this, as they were when the supplemental response was disclosed.

In determining not to strike plaintiffs' supplemental response, the situs disclosure late in the period of fact discovery, the Court has considered the Pennypack factors as follows.

Factors 1 and 2 include prejudice or surprise to the party against whom the evidence is offered and the possibility of curing it.

The defendant argues that it is generally prejudiced in that it constructed its litigation theory in reliance on the earlier response and now has to adapt its strategy to the supplemental response, but the defendant does not provide any specific showing of prejudice, such as, for example, an undermining of its argument pursuant to 35 U.S. Code, Section 102(g) or, again, for example, that the plaintiff is maneuvering around relevant prior art references.

Moreover, the plaintiff offered to cure any alleged prejudice through a supplemental deposition or depositions while there was ample time remaining prior to the production of opening expert reports, but defendant declined without explanation.

Factor 3 concerned potential disruption of an orderly and efficient trial. The defendant has not demonstrated how the trial date would have been jeopardized by supplemental depositions if taken even slightly beyond the fact discovery deadline and how it would be, the trial date would be jeopardized by having to go through the documents identified in the supplemental response, which it already had in its possession having had those documents because they were previously produced.

Factor 4 concerns bad faith or willfulness in withholding the disclosure. The defendant only speculates

that the timing of the supplementation should be deemed bad faith, or in its papers it has described it as "sandbagging."

Because striking evidence is an extreme sanction on which the defendant bears the burden in this instance, the Court will not rest on a speculation of bad faith.

The Court in the Pennypack case, the Third Circuit, Meyers versus Pennypack Woods Home Ownership, indicates along with the other cases that address striking evidence and excluding evidence that there has to be some type of willfulness or bad conduct on the part of the party making the late disclosure. It's an extreme sanction and the Court needs to carefully consider it before imposing it.

While it's not adequately explained why this issue came to a head when it did despite the relevant documents having been disclosed well ahead of the end of fact discovery, nonetheless, plaintiff plausibly responds that it was complying with Rule 26 following further investigation in connection with relevant deposition testimony.

And then, finally, the last factor, the last Pennypack factor is not in dispute as the parties, both sides acknowledge the importance of the information related to conception and reduction to practice.

So for these reasons, defendant's motion to strike the supplemental response is denied.

Are we ready to move on to the second issue, which relates to the regulatory documents?

MR. NISHIMOTO: For Cytiva, yes, Your Honor.

THE COURT: Okay. Who will address that issue? Mr. Bilsker, will you be addressing that on behalf of defendant or will some other counsel other than Mr. Bilsker address it.

MR. CORREDOR: Your Honor, this is Felipe Corredor. I will be addressing this issue.

THE COURT: Okay. Very well. Go ahead.

MR. CORREDOR: This issue is about written regulatory submissions that mention third-party competitors, specifically Knauer, and for context, it's important to understand Dr. Darby's testimony both in his deposition and earlier, much earlier in the case six years ago at the time of the preliminary injunction.

Dr. Darby, who was the vice president in charge of the entire business at Cytiva, which was then known as GE Healthcare until 2015, testified recently in his deposition that he learned about Knauer, an important third-party competitor, for the first time in the context of where he did in connection with submissions made to the regulators.

So the specific quote from the regulator,

Exhibit 5 at page 130 is, we asked him: In what context did you come to learn of Knauer as a competitor?

And he responded, when we were doing the regulatory findings for the acquisition of the business by Danaher, in that spectrum of competitors, which also suggests that there are other likely third-party competitors in this space that are mentioned in those regulatory submissions.

Now, this testimony is inconsistent with prior testimony and argument, testimony from Dr. Darby, and arguments made by Cytiva in the context of the preliminary injunction proceedings, which are -- docket nine is the brief in the consolidated case that came from the Southern District of New York that's cited in the papers, but also docket 11 is Dr. Darby's declaration, which we did not explicitly cite in the papers, but I think one important point is how inconsistent it is with paragraph 21 of Dr. Darby's declaration where he stated in the context of the preliminary injunction proceeding that "the NDC and access systems are the only protein purification systems featuring the modular panel designs allowing for the swapping of interchangeable modules that are currently marketed or sold for the purpose of protein purification in the United States."

Now, the same consistency in Cytiva's likely

arguments regarding the lost profit form of damages they will be seeking is this. They will be arguing that this is just a two-player market. All sales that went to Bio-Rad would have gone to Cytiva but for Bio-Rad's infringement. But based on Dr. Darby's testimony and what he said Cytiva has submitted to the regulatory authorities, it is -- it will show that there is some inconsistency in Cytiva's position that they have taken, and accordingly, these documents are responsive to the requests for production that we cite in our papers, which are essentially number 54 and 68.

No. 54, which are the documents sufficient to show GE's market share in the market for modular protein purification systems, and 68, documents sufficient to identify any company that GE believes participated in the market for modular protein purification systems.

The documents that Cytiva cites in its opposition don't really explain what the -- how significant Knauer is a competitor in this space whereas the regulatory submissions, because they were dealing with a lot of antitrust-related issues as exemplified in Exhibit 7 through an FTC press release about all the business units that Danahar, the acquiring party, had to divest itself of because of overlap with Cytiva's, among other things, chromatography product. It's important, and this

information is responsive and it's important to the damages theory that will be at issue in this case.

And I did want to respond to one last point that Cytiva made in its opposition, which is regarding this idea that they cited the correspondence between the parties and said that this information likely doesn't exist, but if you look at that page 2 of the e-mail, the statement was very vague, and I had actually asked Mr. Nishimoto at a subsequent meet and confer what exactly he meant, because we did not want to move if the documents don't exist contrary to Dr. Darby's testimony, who said that they do exist.

And the only thing he told me is that they asked Dr. Darby and he could not find the documents he testified about. So they did not make any representation about any effort to search for these documents outside of asking Dr. Darby, and so we do believe that based on Dr. Darby's current testimony.

Unless Your Honor has any questions, I think that completes my argument.

THE COURT: All right. Well, again, just a few brief ones before I hear from the plaintiff with respect to the argument that the information is contained in the "regulatory documents," assuming for the sake of argument such documents exist.

When I look at Rule, request for production 54,

it doesn't seem to be specifically directed to such documents. That interrogatory seems to seek documents, or that production request seems to seek documents showing GE's market share in the relevant market.

Request for Production 66 seems to seek documents showing efforts by GE to increase or maintain its market share.

And then request for production 68 is most related to what it is Bio-Rad is seeking in that request for production 68 seeks documents identifying companies GE believes compete in the relevant market.

So in light of that, it looks like these were not specifically requested, but putting that aside for the moment, I want to confirm that when these responses were submitted and answered by Cytiva, that you're not contending, or Bio-Rad is not contending that there are any deficiencies in the production responses. It's just the deposition of Dr. Darby suggested that there might be regulatory documents that have some bearing at least with respect to request for production 68.

Is that correct, that there weren't perceived deficiencies in the prior responses by Cytiva?

MR. CORREDOR: Your Honor, I think we would disagree. I think Dr. Darby's testimony shows that their production was deficient because there are documents that

relate to the market share and how GE's markets share compares to the market share of third-party competitors. And it's not just Knauer, because in the excerpt I read from Dr. Darby's deposition at page 130, he referred to learning about Knauer in a spectrum, "spectrum of competitors."

And so in those regulatory submissions, I mean, it's likely that they played out the market share of third parties in order to minimize, you know, the dominant market position that GE has or Cytiva has in this space, and it shows that actually we have not received documents sufficient to show either these market share or the full spectrum of companies that participate in this market which go directly to RFP 64 and 58.

THE COURT: All right. It seems to the Court that this is not so much of a discovery dispute as it is more of an argument that will eventually be made at some point, even in a motion practice perhaps or eventually at trial taking issue with allegedly inconsistent positions that Cytiva is taking, depending on what goals it wishes to advance, i.e., pursuing lost profits as a damages theory in litigation or whatever position it had taken with respect to facilitate its acquisition or with regulatory issues about a more fulsome multiple party market. And I'm really struggling here to see where this is a discovery matter for the Court when I'm told by Cytiva that there are no such

documents in existence regardless.

MR. CORREDOR: Well, I mean, I think that is a question for Cytiva, because when I asked that question, we also didn't want to bring disputes to Your Honor about documents that don't exist.

But when I asked that question, and the statement in the correspondence is -- was very vague. And there is, my understanding based on followup conversations with Mr. Nishimoto is that they have not really looked for these documents other than asking Dr. Darby if he had them, and Dr. Darby did not have the documents, so he may not have retained them, but presumably, you know, either outside counsel or people involved in the acquisition more closely than Dr. Darby would have these documents. And so this is, you know, a prototypical discovery dispute about compelling information, documents that we should get responsive to our RFPs that we have not gotten, and that makes the production that we have made deficient.

THE COURT: All right. Then I will hear from Cytiva, please.

MS. DeWITT: Good afternoon, Your Honor. This is Amy DeWitt from Arnold & Porter.

And I think Your Honor asked the right questions there, because if we can just start with the document requests themselves, No. 64 and No. 66, No. 68 were all

documents sufficient to show or sufficient to identify, and they were broadly, they were broadly phrased. Documents sufficient to show GE's market share, efforts by GE or companies that GE believe participate in the market for modular chromatography systems.

We satisfied those discovery obligations. We have provided numerous examples of documents dating back 2014/2015 to Bio-Rad of these market share reports that were tracked by Cytiva and GE at the time, and they go right up through March of 2019, and we provided some examples to you as Exhibit B, C, D and E. All of them address Knauer as a competitor.

Exhibit C has 17 pages dedicated to discussing Knauer as one of GE or Cytiva's competitors. Exhibit D is a market research tracker. So seven different companies. This is dated 2/2 2019, right around the time that Bio-Rad is claiming there's some sort of inconsistency with what Cytiva is submitting to some regulatory agency.

In Exhibit E, it's a global playbook from 2019 that discusses "the top three competitors which include Knauer."

So Bio-Rad is trying to manufacture some inconsistency based on Mr. Darby's testimony. And Bio-Rad's counsel even admitted, Mr. Darby stepped down from day-to-day practice around 2015 or 2016 and he was not

involved in (inaudible) of the company.

Bio-Rad was able to take the deposition of that person, Anna Elston, and she testified that Knauer was a competitor.

So all of this information shows no inconsistency whatsoever. In the preliminary injunction briefing and the declaration that Mr. Corredor quoted, those were from 2014, 2015, and the market has changed since then. Knauer, and the documents will show, was a small player at that time, and they disclose those are also evident in the exhibits that we have shown you.

So we don't believe there has been any deficiency in Cytiva's discovery obligations. We produced multiple documents that show that Knauer has been and is today a competitor of Cytiva and Cytiva recognizes that. So we don't think that there is any basis to compel additional documents here.

THE COURT: All right. Can you address the issue of whether or not such documents exist as it was raised in your papers and also by opposing counsel?

MS. DeWITT: Yes. When the issue was raised by Bio-Rad, we went to Mr. Darby, who was the one person at Cytiva that would know if they existed, and we asked him to conduct an investigation. He said he looked through thousands of his e-mails. He did not find those

submissions, and that was a preliminary investigation that we referenced in our letter brief.

THE COURT: All right. Any further investigation beyond Dr. Darby?

MS. DeWITT: Not at this time, Your Honor. And if it -- the submission of Mr. Darby was Cytiva at the time, but the regulatory submissions themselves, it's my understanding they were from Danahar, not Cytiva.

THE COURT: All right. Thank you.

All right. Mr. Corredor, anything further?

MR. CORREDOR: Yes. Just briefly, Your Honor. One point is the documents that were cited by counsel, I think it's important to note that these documents really don't show the relative, what GE's market share is compared to the, to the second competitors in this space, and we think that it's something that would be definitely in the regulatory submissions. And so that's just one example of the deficiencies that are found even in the documents that they had cited to.

MS. DeWITT: And if I may, I apologize, Your Honor. I do want to respond to that, and I am looking at Exhibit D.

THE COURT: All right. Take a moment. We'll get that along with you if you don't mind.

All right. I'm pulling it up now. Exhibit D?

MS. DeWITT: Exhibit D, and I am on -- the last three digits of the Bates number are 923, so it's actually page 136 out of 196.

THE COURT: All right. Let me get there. I have it. Page No. 923. Go ahead.

MS. DeWITT: And this is global market share, and I apologize for the quality of it, but you can see a bar chart on the left that shows relative global unit shares of GE Waters Protein BioSolution, Bio-Rad, Knauer, Agilent, and some others. I apologize. I think that's APAC.

So I don't know what Mr. Corredor is speaking to when he says the documents. And we have produced these through multiple time periods. This is just not a one-off document. There is a of market share documents just like this called a biotracker that had been produced to Bio-Rad in this litigation.

THE COURT: All right. I will turn back to Mr. Corredor. Anything further with respect to this motion to compel?

MR. CORREDOR: Yes. One last point, Your Honor. I mean, I think we heard from counsel that the investigation really wasn't very complete and Dr. Darby testified that he found out this information about Knauer and the whole spectrum of competitors from regulatory submissions, so I

mean these documents must exist and they would be, they would have been submitted to the authorities. That's it, Your Honor.

THE COURT: All right. Thank you.

Again, having read the submissions and the exhibits and having heard the arguments of counsel, it is the Court's ruling that defendant's motion to compel the production of regulatory documents identifying competitors in the modular chromatography product market is denied.

The plaintiff, having conferred preliminarily with Dr. Darby following the deposition, has determined that those documents are not in existence, they're not available. Admittedly, the plaintiff did not go further, but indicates that even if they were available, they're likely in the possession of Danahar, not Cytiva.

Again, we are all assuming hypothetically that such documents exist, but even assuming their existence, the Court finds that the discovery requests on which defendant relies, they're not specifically directed to such documents. At the time the requests for production were filed and thereafter, the defendant did not raise any deficiencies in plaintiffs' production of discovery relating to the market, market participants and market shares, and, in fact, the exhibits that have been discussed on this call, which were attended to Cytiva's response to this motion,

do demonstrate that there was discovery, and specific discovery with respect to a competitor Knauer with respect to market share, market participants and the market, relevant market itself.

Bio-Rad seeks to compel on the basis that plaintiff has taken inconsistent positions on these topics depending on the goals it wants to advance in litigation with respect to a damages theory as contrasted with other positions it has taken with regulators, but the interrogatories themselves do not -- again, they ask for documents sufficient to show, and while defendant argues that the regulatory documents, their existence will shed the most light on plaintiffs' position, such an argument demonstrates that such documents, even if arguably available, would be cumulative and not proportional to the needs of the case under Rule 26 in the Court's view based on what the plaintiff has demonstrated it has already provided on the issues to the defendant.

So that is my ruling with respect to this motion to compel the second category of documents, the regulatory documents.

The third issue relates to privilege and a clawed back inventory disclosure form and whether that opens the door to a subject matter waiver.

So is the defendant ready to proceed with

respect to item number three on the Court's agenda?

MR. CORREDOR: Yes, Your Honor. Mr. Corredor again. I will address this one.

Now, I wanted to get started. Before getting into the waiver issue, I would like to argue based on the privilege log, which is Exhibit 9 to our motion, and Cytiva has cited the Spalding case, but actually, if you look at the privilege log, Exhibit 9, and just as an example, on the first page of Exhibit 9, the specific entry numbers 2, 5, 9 and 12, but many of these entries that are identified as draft patent application materials are not logged to reflect, in a way that reflects any communication between an attorney and a client, and so they are missing a necessary elements for privilege to apply in the first place, at least for those entries that are not, that don't reflect communications between clients because --

THE COURT: Has this been raised though with the Court or with opposing counsel, that is the deficiencies in the manner and the description in which they were entered on the privilege log, because if it hasn't, it's not a matter ripe for the Court.

MR. CORREDOR: I believe I can pull up the exhibit. I believe it was raised with counsel. It was not included in our papers because of page limitations, but if I can pull up the exhibit quickly.

THE COURT: All right. If it is an exhibit, please direct me to where I should be looking.

MR. CORREDOR: Yes. One second, Your Honor.

(Pause.)

MR. CORREDOR: Yes. Exhibit 4 at page 4, which is the correspondence between the parties.

THE COURT: All right.

MR. CORREDOR: The bottom of page 4 is where we raised this issue, and I believe we also discussed it with them on the -- on one of the subsequent meet and confers.

THE COURT: All right. Go ahead.

MR. CORREDOR: Yes. So the point I just wanted to make is that those materials were not even communicated between attorneys and clients as noted in Exhibit 4 at page 4, and they are not, accordingly, not subject to the attorney/client privilege under Spalding.

Now, even if those entries and the remaining patent application materials were the communications between attorneys and clients, even if they are privileged, there has been a waiver as a result of what happened with the Exhibit 67 document.

Now, Cytiva in its opposition admits that Mr. Lundqvist testified that the invention disclosure form was an accurate summary of his invention. Specifically, this is Exhibit 10 of page 240, lines 4 though 6. And this

testimony shows that he relied on it during deposition to support the idea of what his invention was.

And it is also important to note that Mr. Lundqvist was testifying on behalf of Cytiva as a 30(b)(6) designee on conception and reduction to practice. So this testimony shows reliance by Cytiva on Exhibit 67.

And Mr. Lundqvist also provided additional testimony at pages, for example, page 238, line 3 to 5 of his deposition, where he testified that he recognized it as a disclosure of the invention, and then subsequently at page 241 he testified about the patents application process and how the information went to in-house counsel in order to be incorporated into the draft patent application materials. So this just showed additional reliance on these materials.

And moving on, Your Honor, about, you know, whether, whether the Exhibit 57, all of that was proper or not. I think it is worth noting here that Cytiva in its opposition does not cite any case at all supporting the idea that a document that is used in a deposition can be clawed back if the use is not objected to at that deposition, and I think, you know, their failure to cite any specific case speaks volumes about what happened and what the implications of what happened with Exhibit 67 should be.

The two cases they do cite are completely

inapposite. First, they cite to Hanes. It doesn't even deal with waiver at all. And then they also cite to IBM, which talks about waiver in the context, in a very different context, which is waiver as a result of disclosures made to a third party.

So the only cases that have been cited by either side show that, you know, waiver is -- follows in these circumstances. And the two specific cases are Kramer and LunarGaming. In both cases, show that a failure to object either to questions in the case of Kramer or to exhibits in the case of LunarGaming at a deposition waive the privilege over, over those materials.

And LunarGaming actually cites several cases holding as much in support of its own holding that "under both state and federal law, if a privileged document is used at a deposition and the privilege holder fails to object immediately, the privilege is waived," and this is at page star five of LunarGaming.

Now, in its opposition, Cytiva argued that there were other uses of the exhibit in LunarGaming, but if you read the decision, the Court found that the very first unobjected to use of the privileged document at the first deposition waived the privilege and its discussion of additional later uses in other depositions and in a motion for summary judgment only further strengthen the waiver,

but, you know, if the use, the unobjected to use at the very first deposition was enough to waive the privilege. And the Court ruled as much by reasoning that, you know, pointing in part to the Rule 502(b)(3) requirement that the party asserting privilege must promptly rectify any in advertent disclosure upon discovery, and the failure to object at the deposition waives the privilege with respect to, in that case it was, I guess, a document called the 2003 memo.

So I think it's pretty -- our position is that it's pretty clear that there has been a waiver here.

And now the second issue is the scope of the waiver, and I think based on the factors and the sword and shield (inaudible) and Rule 502(a), it is our contention that this waiver extends to the draft patent application material that is the subject of our motion, one, because the waiver was intentional. Counsel elected not to object at the deposition.

The patent application material compared the same subject matter, which is the description of the invention that was made in preparation for filing for patent applications under the subject matter, and that all of these materials should in fairness be considered together because, Your Honor, the description of the invention has changed over time. And I think we heard a little bit of that in the, in Mr. Bilsker's argument earlier today, but that is

why we need -- you know, if it's appropriate to extend the waiver under subject matter doctrine to the remainder, to the remaining related draft patent application materials that we identified just exactly as Your Honor ruled in Hoff Mountain, which is a case that Cytiva cited, where it found that -- where you found that, Your Honor found that the waiver extended to related subject matters.

I think that's all I have, Your Honor.

THE COURT: Yes. I figured that you were at the end when you paused.

I have a few questions, if you don't mind, before I hear from Cytiva.

With respect to this case, there was a protective order that Cytiva cited, and actually, it's docket item number -- I think it's docket item 37 if I have it correctly in the case. In any event, it's paragraph 46 of the protective order, which incorporates the clawback provisions of Rule 26(b)(5)(B). So when there is, assume for this hypothetical, when there is an inadvertent disclosure of privileged information that's able to be clawed back, and you don't dispute that. Am I correct on that?

MR. CORREDOR: Well, I think the answer is two-pronged. One is, as a general matter, there is a clawback provision, and I think what makes Exhibit 57

different is that we did use it at the deposition of Mr. Lundqvist, and so as a result, the time to have clawed back that document was at the deposition, because if you read, you know, both Rule 502(b)(3), Rule of Evidence 502(B)(3) and Rule 26(b)(5), which we just cited, both of them emphasize, you know, the need to do this promptly. And when a document is presented to you in deposition, not only was, you know, the counsel defending Mr. Lundkvist there.

Mr. Sorby, who was involved in these documents, was also attending the deposition, and he did not say anything about this material being privileged.

So I think there is an absence of action to claw things back. And just as an example, I mean, they, Cytiva used a privilege document with one of our witnesses. At least it was partially privileged. And I immediately on the spot clawed it back and said, you know, you can't ask questions about this one slide in the document because it's privileged and we're clawing it back pursuant to the protective order, and then I followed up with a letter which, you know, they did not do, and so that is the key point here, Your Honor.

THE COURT: All right. Thank you. I will hear from plaintiffs' counsel.

MR. NISHIMOTO: Thank you, Your Honor. Ryan Nishimoto again for the plaintiff.

Let me address, first of all, the issue that we raised in opposition, which I heard again from Mr. Corredor, which is the assertion that the witness relied on this Exhibit 67 to describe his invention.

THE COURT: I read the transcript, and actually, I have the transcript pages in front of me, so I don't need it, you know, repeated if you don't mind. I'm more interested in addressing the issue of whether a prompt objection was required at the deposition, whether it was sufficient and timely, but 12 days later a request to claw it back was made. And if it is, in fact, waived as to the disclosure form, where do we stand with regard to subject matter waiver?

MR. NISHIMOTO: Thank you, Your Honor. I appreciate the guidance.

On the issue of the promptness of the objection, it's important to note, and Your Honor has the transcript in front of you, that the witness had no idea what he was looking at in terms of who created it, where it came from, who drafted the summary, whether he had even submitted it in a bench disclosure.

There's nothing on the face of the document itself that indicates privilege, that states that it's something that was prepared by prosecution counsel. There's no signatures on it. And, in fact, the witness himself

said, I think, we cited it in our brief, and, again, Your Honor has the transcript, the extent of his testimony on that.

Here, where there's nothing on the face of the document indicating it's privileged, the witness knew nothing about the document. Where, to my mind, no one at the deposition knew or suspected the document was privileged, it strikes me as unusual then to find a clear and intentional waiver of the privilege when the basis for the privilege wasn't even established and the witness knew nothing about it.

It's a point that I've raised, Cytiva has raised in its opposition. It's the last paragraph and it goes to the question of whether anyone at the deposition suspected the document was privileged, and counsel for Bio-Rad had represented that he did not.

There was an exchange immediately following the questioning on this document as to whether the witness had waived privilege and counsel defending Cytiva, who was me, said, I disagree. I don't think there has been a waiver, and, in fact, I didn't see a waiver based on that questioning, and if we look back at the information that was injected into the case, there was no privileged information.

When we went back and looked and investigated

these issues, more specifically, issues related to whether there was any clawback, there were a number of documents that we needed to address.

Let me address then, and I apologize. I'm a little disjointed here.

So what I just addressed was why that was not raised at deposition. No one realized it was privilege before during the deposition. Your Honor noted the 12 days that counsel has or, excuse me, that Bio-Rad in its brief. And I will say it took us awhile to go back and take a look at whether there were additional documents, what was the origin of Exhibit 67, whether there was a privilege claim on this.

I happened also to be out of the office for a week on a family vacation an opinion. But importantly, the point here is during that 12-day gap, nothing happened in the interim with regard to Exhibit 7 -- 57. It was not being subsequently used in a summary judgment motion at the time, used in subsequent deposition by either party. It wasn't on anyone's radar as far as I know.

THE COURT: You're breaking up, Mr. Nishimoto, so please try and stay close to your microphone. And, again, I will ask others if you are not muted, please stay on mute. I'm muting my microphone as well.

MR. NISHIMOTO: Thank you. Let me just say the

fact that nothing happened in the interim with that document is an important point, and that is -- that distinguishes this case from, for example, the LunarGaming case that Bio-Rad has cited wherein LunarGaming, the document was subsequently used in a summary judgment motion. It was subsequently used at a second deposition. It kept coming around in the litigation. Here, nothing happened during that interim.

THE COURT: Go ahead.

MR. NISHIMOTO: When it comes then to the subject matter waiver, and as we pointed out in our brief, the Hock Mountain case, of course, which the Court is aware of and Mr. Corredor alluded to that as well, I think it's important to note and to remind everyone here, of course, that that is reserved for unusual situations.

There is no attempt to use this information as a sword in this case. Cytiva has no intent of doing that. There's no information from Exhibit 67 that it is attempted to be used as a sword. There is nothing from any of the documents that it had been withheld as privileged in this case or clawed back that Cytiva is attempting to use.

This is not a case even where the inventor himself has relied on the document to support his invention or testimony regarding it, and so it certainly does not reach that level of a subject matter waiver.

Now, the first issue that came up when Mr. Corredor was speaking was the observation that certain entries on a privilege log he says did not identify a person to whom the information was communicated. I don't believe that was briefed here. I don't believe that issue was ripe for the Court. But addressing that, Mr. Corredor also noted that during Mr. Lundqvist's deposition, that is the inventor, after the questioning on Exhibit 67, Mr. Lundkvist was asked, what is the patent application process? And he said, well, we talked to the prosecution counsel at then GE Healthcare, Leonard Sorby.

Now, that information itself is not privileged. That's the kind of information that would appear on a privilege log. And to the extent there are questions about who information was translated to during the patent application process, I think the inventor testimony there clarifies it, and to the extent there's questions on the law, we'd be happy to address that. But I don't think because that issue has been presented on the papers, it was certainly not something that we addressed in the papers, but I wanted to address it here.

THE COURT: Thank you.

Anything further, Mr. Corredor? I think you may be on mute.

MR. CORREDOR: Sorry, Your Honor. My apologies.

Yes, Your Honor. A couple of quick points.

One, I think Mr. Nishimoto said that Mr. Lundqvist had no idea what the document was, but if you look at page 238, lines 3 to 5, he testified that he recognized it as a disclosure of invention, so he actually knew what the form was. And based on his testimony, this is the type of document that were exchanged with Mr. Sorby on page 241. And so it would be incumbent on counsel and Mr. Sorby to have clawed back the documents right then and there if they wanted to preserve the privilege.

And then the other thing, the other point I wanted to make is we heard Mr. Nishimoto attempt to distinguish LunarGaming, but I would direct your attention to page *5 of that, of that case again, and I will read a passage that I think is important, which is Based on the federal and state law cited above and the Rule 502(b)(3) requirement that Lunar promptly rectify inadvertent disclosure upon discovery, Lunar's failure to object at the deposition waived the privilege with respect to the 2003.

So this was -- this shows that the Court was basing its decision on the failure to object at that very first deposition and was not relying on, you know, the subsequent use that Mr. Nishimoto pointed out was not made in this case.

That is all I have, Your Honor.

THE COURT: All right. Thank you.

MR. NISHIMOTO: Your Honor, if I may --

THE COURT: Go ahead.

MR. NISHIMOTO: Apologies. This is Ryan Nishimoto again.

I do want to note that we do, as the Court pointed out, have a protective order in this case that governed, which should be the guiding principle here. I'm not familiar with what protective order or other issues were at issue in an unrelated case like LunarGaming.

THE COURT: All right. Having heard the arguments of counsel in conjunction with reading the submissions, I'm prepared to make a ruling on the record with respect to this application. And defendant's motion to compel production of a clawed back invention disclosure form and draft patent application material is denied, and my reasons are as follows.

Certainly, ideally, if a privileged document comes into play in a deposition in a perfect world, one would expect that an immediate objection on privilege would be made and the document clawed back. But in this instance there are a number of reasons that will guide me in terms of not finding a privilege waiver here.

The invention disclosure form introduced as an exhibit to the Lundkvist deposition was clawed back by the

plaintiff in accordance with paragraph 45 of the protective order, which incorporates the clawback provisions of Rule 26(b)(5)(B).

I have read the Lundkvist deposition transcript attached as Exhibit 10 to document item number 139 and rely upon the testimony as follows as factual support for my discovery ruling.

Lundkvist didn't remember seeing the documents, did not prepare the invention disclosure form, did not submit a disclosure or description of the relevant modular system, finds the summary of the idea consistent with what he invented but had no participation in the drafting of the patent application that was filed. And while with that, as has been represented on this record, there was nothing glaring or standing out to indicate that this document was privileged, so the Court finds that the clawback of it, even though it took 12 days to do that, does not subject the plaintiff to a privilege waiver as with respect to this document. And the facts I've just quoted just for the record are from pages 237 to 240 of the Lundkvist deposition.

The deposition testimony of the witness that I've just summarized in my view does not amount to a privilege waiver as the witness did not testify to reliance on the invention disclosure form to disclose or describe his

idea or invention at his deposition, and therefore I find no subject matter waiver as to the plaintiffs' draft patent application materials.

As it was noted in the arguments, the subject matter waiver is really limited in the situation in which a party intentionally put protected information into the litigation for a tactical advantage, which in fairness requires a further disclosure of related protected information in order to prevent a selective and misleading presentation of evidence to the disadvantage of the adversary, and that's really what is going on in Hoff Mountain versus Merex at 2016 Westlaw 690883.

Here, the Court finds the plaintiffs' disclosure inadvertent, not intentional. Thus, the subject matter waiver is not invoked. With respect to those, any alleged infirmities in logging items on the privilege log to indicate who the communications were between, I instruct that the parties meet and confer about that and then present any issues to the Court with respect to deficiencies in the privilege log or improper designation of items on the privilege log as privileged when they are not, in fact, attorney/client communications or work product documents.

I don't know that that issue is sufficiently ripe for me. It wasn't really spelled out in the papers,

and based on what I'm hearing from Cytiva, it wasn't expected to come up with respect to this discovery dispute teleconference. So the parties should continue to work on that and promptly bring to my attention any issues that remain with respect to the privilege log.

So those are my rulings. As I said earlier, any objections can be taken up in accordance with the time frame under Rule 72(a). This transcript will serve as the order of the Court.

With that, anything further from the Bio-Rad defendant?

MR. BILSKER: No, Your Honor.

THE COURT: Anything further from the plaintiff?

MR. NISHIMOTO: No, Your Honor.

THE COURT: All right. This concludes our discovery teleconference. Take care. Stay well, counsel. Thank you.

(Counsel respond, "Thank you, Your Honor.")

(Telephone conference concluded at 3:23 p.m.)

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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GE HEALTHCARE BIO-SCIENCES AB, GE HEALTHCARE BIO-SCIENCES CORPORATION, and GENERAL ELECTRIC COMPANY,	)	C.A. No. 18-1899-CFC
Plaintiffs,	)	**DEMAND FOR JURY TRIAL**
v.	)	
BIO-RAD LABORATORIES, INC.,	)	
Defendant.	)	

DEFENDANT BIO-RAD LABORATORIES, INC.'S
FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Bio-Rad Laboratories, Inc. ("Bio-Rad") requests that Plaintiffs GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company answer, in writing and under oath, the following Interrogatories within thirty (30) days of service.

DEFINITIONS

As used herein, the terms listed below shall be defined as follows. Insofar as a term is not explicitly defined, the meaning to be used is the commonly accepted definition of the term. Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests for Production is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. In these Requests for Production, the following terms are to be given their ascribed definitions:

1. The term "Bio-Rad" shall mean Defendant Bio-Rad Laboratories, Inc. and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates.

2. “Plaintiffs,” “You,” “Your,” and “GE” shall refer to Plaintiffs GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company, individually and collectively, including, without limitation, all corporate locations of each, and all predecessors, predecessors-in-interest, subsidiaries, parents, and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint venture, licensing agreements, or partnership relationships with GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, or General Electric Company and others acting on behalf of GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, or General Electric Company.

3. “This action” shall mean the above captioned litigation, *GE Healthcare Bio-Sciences AB et al. v. Bio-Rad Laboratories, Inc.*, Civil Action No. 1:18-1899-CFC (D. Del.).

4. “S.D.N.Y. litigation” shall mean *GE Healthcare Bio-Sciences AB et al. v. Bio-Rad Labratories, Inc.*, Case No. 2:14-cv-07080 (LTS) (S.D.N.Y.).

5. “Patents-in-Suit” and “Asserted Patents” shall mean United States Patent No. 9,709,589 (the “’589 Patent”), U.S. Patent No. 9,709,590 (the “’590 Patent”), U.S. Patent No. 9,709,591 (the “’591 Patent”), and U.S. Patent No. 9,671,420 (the “’420 Patent”).

6. “Related Patents” shall mean all patents and patent applications claiming priority to Patent Application No. 0950431-7 filed in Sweden on June 9, 2009 and/or to International Patent Application No. PCT/SE2010/050624 filed on June 4, 2010, including U.S. Patent No. 8,821,718, U.S. Patent No. 9,404,902, and U.S. Patent No. RE47,124.

7. “Documents” shall mean all written, graphic or otherwise recorded material, Including without limitation, electronically stored information regardless of the form of storage medium, microfilms or other film records or impressions, tape recordings or computer cards,

floppy disks or printouts, any and all papers, photographs, films, recordings, memoranda, books, records, accounts, communications, letters, telegrams, correspondence, notes of meetings, notes of conversations, notes of telephone calls, inter-office memoranda or written communications of any nature, recordings of conversations either in writings or upon any mechanical or electrical recording devices, Including e-mail, notes, papers, reports, analyses, invoices, canceled checks or check stubs, receipts, minutes of meetings, time sheets, diaries, desk calendars, ledgers, schedules, licenses, financial statements, telephone bills, logs, and any differing versions of any of the foregoing, whether so denominated, formal, informal or otherwise, as well as copies of the foregoing which differ in any way, including by the addition of handwritten notations or other written or printed matter of any nature, from the original. The foregoing also specifically includes information stored in a computer database and capable of being generated in documentary form, such as electronic mail, text messages (i.e., SMS messages), other electronic messages including messages sent or received via Slack, WhatsApp, Google Hangouts, Facebook Messenger, and the like.

8. “Communications” shall mean, without limitation, any transmission, conveyance or exchange of a word, statement, fact, thing, idea, Document, instruction, information, demand or question by any medium, whether by written, oral or other means, including but not limited to, electronic communications and electronic mail (“e-mail”).

9. “Thing” shall mean any physical specimen or tangible item in Your possession, custody or control, including without limitation research and development samples, prototypes, productions samples, and the like.

10. “Person” shall mean any individual, corporation, proprietorship, association, joint venture, company, partnership or other business or legal entity, including governmental bodies

and agencies. The masculine includes the feminine and vice versa; the singular includes the plural and vice versa.

11. The term “identify” with respect to a person means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

12. The term “identify” with respect to a document means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

13. “Include” and “including” shall mean including without limitation.

14. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.

15. The words “or” and “and” shall be read both in the conjunctive and in the disjunctive wherever they appear, and neither of these words shall be interpreted to limit the scope of these Requests for Production.

16. “Referring to,” “relating to,” “showing,” or “regarding” shall mean containing, describing, discussing, embodying, commenting upon, identifying, incorporating, summarizing, constituting, comprising, or otherwise pertinent to the matter or any aspect thereof.

17. The use of the singular form of any word includes the plural and vice versa.

18. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

19. “Prior art” shall refer to all systems, products, publications, articles, communications, or other documents describing or explaining Modular Automated Fluid Handling Systems, chromatography systems, or other preparative protein purification systems

that allow for interchangeable fluid handling modules or units and were in existence prior to June 9, 2009.

20. "Infringe" and "infringement" means direct infringement, contributory infringement, infringement by inducement, literal infringement, and infringement under the doctrine of equivalents.

21. The term "asserted claims" refers to each and every claim of the Asserted Patents that Plaintiffs contend Bio-Rad infringes. The term "asserted claim" refers to one of the asserted claims.

22. The phrase "written description" refers to the requirement that "[t]he specification shall contain a written description of the invention" as set forth in 35 U.S.C. § 112 ¶ 1 and *Ariad Pharm., Inc. v. Eli Lilly & Co.,* 598 F.3d 1336 (Fed. Cir. 2010).

23. The phrase "enabling disclosure" refers to the requirement that "[t]he specification shall contain a written description of . . . the manner and process of making and using [the invention], in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same" as set forth in 35 U.S.C. § 112 ¶ 1.

24. The foregoing terms shall carry the same definitions whether they appear capitalized or in lower case.

INSTRUCTIONS

The following instructions apply to these Requests for Production and should be considered as a part of each such INTERROGATORY.

1. If in responding to these Interrogatories you claim any ambiguity in either an Interrogatory or a definition or instruction applicable thereto, identify in your response the language you consider ambiguous and state the interpretation you are using in responding.

2. If you object to any of these Interrogatories on any grounds that it is protected from disclosure by the attorney-client privilege, work-product doctrine, or any other privilege, you shall identify (i) the author(s), speaker, addressee(s), any indicated or blind copyee(s), or third parties; (ii) the date; (iii) the subject matter(s) of the information; (iv) the nature of the privilege or immunity asserted; and (v) any additional facts on which you would base your claim of privilege or immunity.

3. No part of an Interrogatory may be left unanswered merely because you assert an objection to another part of that Interrogatory.

4. If Plaintiffs contend that Plaintiffs cannot answer any of these Interrogatories completely, Plaintiffs shall answer to the extent possible, specifying the reasons for Plaintiffs' inability to answer the remainder of the Interrogatory, and stating what information, knowledge, or belief Plaintiffs have concerning any unanswered portion.

5. If Plaintiffs elect to avail themselves of the procedure for answering Interrogatories authorized by Federal Rule of Civil Procedure 33(d), Plaintiffs shall specify the Bates numbers of the documents from which the answer may be derived or ascertained.

6. Pursuant to Federal Rule of Civil Procedure 26(e), this set of Interrogatories is a continuing one and requires further and supplemental responses by any recipient of this set of Interrogatories as and whenever such person acquires additional information after the time of the initial responses hereunder. Plaintiffs are under a similar duty to correct any incorrect response that they later learns is incorrect.

INTERROGATORIES

INTERROGATORY NO. 1:

For each claim of the Asserted Patents, describe in detail on an element-by-element basis, all facts relating to its conception and reduction to practice, including identifying each purported inventor, the date of conception, the date of reduction to practice of its subject matter, all acts you contend represent diligence occurring between the dates of conception and reduction to practice, each person involved in such conception, diligence and/or reduction to practice and each such person's specific contributions thereto, where the invention was first conceived and/or reduced to practice, when, where, and to whom the invention was first disclosed, and identifying each person, including third parties, who worked on any portion (no matter how trivial) of the subject matter, including any portion of the alleged invention(s) described and claimed in the Asserted Patents, describing in detail each person's role and the dates and places each such person assisted, supervised, or was otherwise so involved, and identifying all documents relating to these facts.

INTERROGATORY NO. 2:

State whether Plaintiff contends there are secondary considerations that should be considered by the Court in connection with its determination pursuant to 35 U.S.C. § 103 of the validity of each asserted claim of the Asserted Patents, and if the answer is anything other than an unqualified no for any claim, identify for that claim each such secondary consideration and describe in detail Plaintiffs' contentions as to why each such secondary consideration demonstrates obviousness or nonobviousness and all facts in support thereof, including any documents in support of such facts, testimony from past cases in support of such facts, and any persons with knowledge of such facts.

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Dated: May 24, 2019
6224559 / 45671

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I, Alan R. Silverstein, hereby certify that on May 24, 2019, true and correct copies of the within document were served on the following counsel of record at the addresses and in the manner indicated:

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6077685/45671

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

GE HEALTHCARE BIO-SCIENCES AB, and GLOBAL LIFE SCIENCES SOLUTIONS USA, LLC,	)	
Plaintiffs,	)	
v.	)	C.A. No. 18-1899-CFC
BIO-RAD LABORATORIES, INC.,	)	**CONSOLIDATED**
Defendant.	)	

PLAINTIFFS' FIRST SUPPLEMENTAL RESPONSES TO DEFENDANT BIO-RAD LABORATORIES, INC.'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs GE HEALTHCARE BIO-SCIENCES AB and Global Life Sciences Solutions USA LLC (collectively "Plaintiffs") hereby provide the following supplemental responses to the First Set of Interrogatories served by BIO-RAD LABORATORIES, INC. ("Bio-Rad"):

PRELIMINARY STATEMENT

Plaintiffs' investigation, discovery and analysis are ongoing, and Plaintiffs' response to each of these interrogatories is based on information and documents presently available to Plaintiffs after reasonable inquiry. Plaintiffs reserve the right to supplement or amend these responses in the event further information and/or documents are disclosed or discovered. In addition, Plaintiffs' responses are given without prejudice to its rights to introduce as evidence at trial any subsequently discovered or unintentionally omitted information and/or documents.

Specific objections to each of these interrogatories are made on an individual basis in the responses below. In addition to these specific objections, Plaintiffs make certain continuing objections ("General Objections") to the interrogatories. These General Objections are hereby

incorporated by reference into the responses made to each separate interrogatory. For particular emphasis, Plaintiffs have, from time to time, expressly included one or more of the General Objections in certain of its responses below. Plaintiffs' response to each individual interrogatory is submitted without prejudice to, and without in any respect waiving, any General Objections not expressly set forth in that specific response. Accordingly, the inclusion of any specific objection in a response to an interrogatory below is neither intended as, nor shall in any way be deemed to be, a waiver of any General Objections or of any other specific objection made herein or that may be asserted at a later date. In addition, the failure to include at this time any continuing or specific objection to an interrogatory is neither intended as, nor shall in any way be deemed to be, a waiver of Plaintiffs' right to assert that or any other objection at a later date.

No incidental or implied admissions are intended by the responses herein. Plaintiffs' response and/or objections to a particular interrogatory shall not be taken as an admission that Plaintiffs accept or admits the existence of any "fact" set forth in or assumed by that interrogatory.

GENERAL OBJECTIONS

Plaintiffs make the following General Objections to Bio-Rad's interrogatories, including without limitation the instructions and definitions set forth therein, whether or not separately set forth in each response to each individual interrogatory.

1. Plaintiffs object to the interrogatories to the extent they seek information protected by any relevant privilege or legal protection, including, without limitation, the attorney-client privilege, the work product doctrine, the joint defense privilege, the settlement or settlement negotiation privilege, settlement materials, or trial preparation materials. Any statement herein to the effect that Plaintiffs will provide information in response to an

interrogatory is limited to information that does not fall within the scope of any relevant privilege.

2. Plaintiffs object to the interrogatories to the extent they are overly broad, unduly burdensome or seek information that is irrelevant to any claim or defense and not reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiffs object to the interrogatories to the extent that they are vague, ambiguous, and use unlimited, undefined, subjective or open-ended terms or phrases.

4. Plaintiffs object to the interrogatories to the extent that the purported benefit of the discovery sought by the interrogatories is outweighed by the burden and expense of responding to the interrogatories pursuant to Rules 26(b)(1) and 26(b)(2) of the Federal Rules of Civil Procedure.

5. Plaintiffs object to the interrogatories to the extent they attempt to impose burdens on plaintiffs inconsistent with, or in excess of, the requirements of the Federal Rules of Civil Procedure, the Local Rules of this Court, and/or EU or Swedish privacy, data protection or any other applicable laws.

6. Plaintiffs object to the interrogatories to the extent they seek confidential, proprietary, trade secret, private or financial information that is protected from disclosure by any applicable trade secret or privacy statute or law. Plaintiffs will provide such information only pursuant to the terms of a suitable protective order agreed to by the parties and entered by the court in this action, a suitable protective order entered by the court in response to a party's motion for protective order filed in the action, and/or with the consent of any third party that may claim confidentiality rights with respect to information responsive to the interrogatories.

7. Plaintiffs object to each interrogatory to the extent it seeks information regarding testifying experts, relating to the opinions of testifying experts, or subject to expert discovery in advance of any deadline set by the Court for experts in its April 20, 2020 Revised Scheduling Order.

8. Plaintiffs object to the interrogatories to the extent they seek information unknown to Plaintiffs, that refers to persons, entities or events not known to plaintiffs, or that relates to documents not within Plaintiffs' possession, custody, or control. Such a requirement would exceed Plaintiffs' obligations under the Federal Rules and would subject Plaintiffs to unreasonable and undue oppression, burden and expense. In responding to these interrogatories, Plaintiffs shall respond only on behalf of itself and shall not undertake the burden and expense of attempting to provide information presently unknown to Plaintiffs or relating to documents outside Plaintiffs' possession, custody, or control.

9. Plaintiffs object to the interrogatories to the extent they fail to specify a relevant time period, or to the extent any part of any specified time period is irrelevant to any claim or defense at issue in this case, on the grounds that the interrogatories are overly broad, unduly burdensome, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

10. Plaintiffs object to the terms "GE", "You", "Your" and "Plaintiffs" as defined in the interrogatories, as overly broad and unduly burdensome, to the extent the interrogatories purport to seek information relating to persons or entities that are separate and distinct from GE and over whom GE exercises no control. In responding to these interrogatories, GE shall interpret the terms "GE," "You," and "Plaintiffs" to refer only to Plaintiffs GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company.

11. Plaintiffs object to the definitions of the terms “Patents-in-Suit” and “Asserted Patents” as overly broad and unduly burdensome to the extent that the interrogatories purport to seek information relating to patents other than those specifically listed in the Complaint: U.S. Patent Nos. 9,709,589, 9,709,590, 9,709,591, and 9,671,420.

12. Plaintiffs object to the definition of the term “Related Patents” as vague, ambiguous, overly broad, unduly burdensome, and not proportional to the needs of the cases to the extent it seeks to include within its scope “any and all applications claiming priority to Patent Application No. 0950431-7 filed in Sweden on June 9, 2009 and/or to International Application No. PCT/SE2010/050624 filed on June 4, 2010....”

13. Plaintiffs object to the term “Documents” as vague, ambiguous, overly broad, and unduly burdensome.

14. Plaintiffs object to the term “Prior art” as vague, ambiguous, overly broad, and unduly burdensome to the extent it seeks to include within its scope “all systems, products, publications, articles, communications, or other documents describing or explaining [various topics] in existence prior to June 9, 2009.”

15. Plaintiffs object to Bio-Rad’s instructions as overly broad and unduly burdensome.

16. Each and all of these General Objections shall be deemed incorporated by reference into each and every objection made herein to a specific interrogatory.

17. Discovery and Plaintiffs’ investigation in connection with this case are continuing. As a result, Plaintiffs’ objections and responses are limited to information obtained and reviewed to date and are given without prejudice to Plaintiffs’ right to amend or supplement its objections and responses after considering information or reviewed through further discovery.

Plaintiffs reserve its rights to supplement its responses consistent with the applicable Federal Rules of Civil Procedure and the District of Delaware's Local Rules.

INTERROGATORIES

INTERROGATORY NO. 1:

For each claim of the Asserted Patents, describe in detail on an element-by-element basis, all facts relating to its conception and reduction to practice, including identifying each purported inventor, the date of conception, the date of reduction to practice of its subject matter, all acts you contend represent diligence occurring between the dates of conception and reduction to practice, each person involved in such conception, diligence and/or reduction to practice and each such person's specific contributions thereto, where the invention was first conceived and/or reduced to practice, when, where, and to whom the invention was first disclosed, and identifying each person, including third parties, who worked on any portion (no matter how trivial) of the subject matter, including any portion of the alleged invention(s) described and claimed in the Asserted Patents, describing in detail each person's role and the dates and places each such person assisted, supervised, or was otherwise so involved, and identifying all documents relating to these facts.

RESPONSE TO INTERROGATORY NO. 1:

GE incorporates its General Objections. GE objects to the interrogatory to the extent that it seeks information or documents covered by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity. GE also objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this case to the extent that it seeks "all facts relating to its conception and reduction to practice" of each claim of the Asserted Patents. GE further objects to this interrogatory as compound and containing multiple subparts asserted in a single interrogatory.

Subject to its general and specific objections, GE responds as follows: GE will identify, pursuant to Federal Rule of Civil Procedure 33(d), documents for which the response to this interrogatory can be derived.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiffs hereby incorporate their objections and responses to Bio-Rad's Interrogatories in their entirety.

Subject to its general and specific objections, Plaintiffs supplement their response as follows: Each claim of the Asserted Patents were conceived by Johan Blomberg and Mats Lundquist in or around June of 2005 and reduced to practice no later than in or around December 2005. Additionally, purusant to Federal Rule of Procedure 33(d), Plaintiffs identify the following documents for which the response to this interrogatory can be derived:

GEHC_021910 – GEHC_021918; GEHC_021919 – GEHC_021934; GEHC_026813 – GEHC_026814; GEHC_027017 – GEHC_027017; GEHC_029487 – GEHC_029488; GEHC_029489 – GEHC_029489; GEHC_029491 – GEHC_029491; GEHC_048484 – GEHC_048490; GEHC_048492 – GEHC_048498; GEHC_048544 – GEHC_048554; GEHC_050578 – GEHC_050582; GEHC_050583 – GEHC_050587; GEHC_050589 – GEHC_050594; GEHC_050600 – GEHC_050605; GEHC_050606 – GEHC_050615; GEHC_050616 – GEHC_050626; GEHC_050639 – GEHC_050646; GEHC_050647 – GEHC_050652; GEHC_050653 – GEHC_050663; GEHC_050664 – GEHC_050669; GEHC_050670 – GEHC_050678; GEHC_050679 – GEHC_050684; GEHC_050685 – GEHC_050692; GEHC_050697 – GEHC_050704; GEHC_050705 – GEHC_050711; GEHC_051363 – GEHC_051369; GEHC_051498 – GEHC_051498; GEHC_051499 – GEHC_051499; GEHC_063219 – GEHC_063221; GEHC_063222 – GEHC_063223; GEHC_063224 – GEHC_063225; GEHC_063230 – GEHC_063231; GEHC_063232 – GEHC_063233; GEHC_063234 – GEHC_063235; GEHC_063236 – GEHC_063238; GEHC_063239 – GEHC_063243; GEHC_063244 – GEHC_063247; GEHC_063248 – GEHC_063251; GEHC_063252 – GEHC_063258; GEHC_063396 – GEHC_063403; GEHC_066650 – GEHC_066650; GEHC_066651 – GEHC_066651; GEHC_066653 – GEHC_066653; GEHC_072888 – GEHC_072896; GEHC_072897 – GEHC_072908; GEHC_180199 – GEHC_180205; GEHC_185779 – GEHC_185779; GEHC_185780 – GEHC_185780; GEHC_185781 – GEHC_185781; GEHC_188868 – GEHC_188875; GEHC_138865 – GEHC_138866; GEHC_138867 – GEHC_138868; GEHC_138869 – GEHC_138870; GEHC_138871 – GEHC_138872; GEHC_138873 – GEHC_138874; GEHC_138875 – GEHC_138876; GEHC_138877 – GEHC_138879; GEHC_138880 – GEHC_138881; GEHC_138952 – GEHC_138953; GEHC_144475 – GEHC_144478; GEHC_144479 – GEHC_144481; GEHC_144482 – GEHC_144485; GEHC_144486 – GEHC_144490; GEHC_144491 – GEHC_144496; GEHC_144497 – GEHC_144502; GEHC_144503 – GEHC_144507; GEHC_144508 – GEHC_144514; GEHC_144515 – GEHC_144519; GEHC_144520 – GEHC_144527; GEHC_156415 – GEHC_156417; GEHCDEL495087 – GEHCDEL495088; GEHCDEL492820 – GEHCDEL492826; GEHCDEL472253 – GEHCDEL472256; GEHCDEL042936 – GEHCDEL042938; GEHCDEL496160 – GEHCDEL496162; GEHCDEL042930 – GEHCDEL042933; GEHCDEL496154 – GEHCDEL496157; GEHCDEL042926 – GEHCDEL042928;

GEHCDEL042921 – GEHCDEL042924; GEHCDEL496145 – GEHCDEL496148; GEHCDEL042918 – GEHCDEL042919; GEHCDEL496142 – GEHCDEL496143; GEHCDEL042908 – GEHCDEL042911; GEHCDEL042912 – GEHCDEL042916; GEHCDEL496132 – GEHCDEL496135; GEHCDEL496136 – GEHCDEL496140; GEHCDEL042898 – GEHCDEL042902; GEHCDEL496122 – GEHCDEL496126; GEHCDEL042891 – GEHCDEL042896; GEHCDEL496110 – GEHCDEL496114; GEHCDEL042884 – GEHCDEL042889; GEHCDEL496103 – GEHCDEL496108; GEHCDEL190799 – GEHCDEL190802; GEHCDEL042877 – GEHCDEL042882; GEHCDEL496096 – GEHCDEL496101; GEHCDEL042872 – GEHCDEL042875; GEHCDEL490361 – GEHCDEL490362; GEHCDEL190790 – GEHCDEL190797; GEHCDEL190784 – GEHCDEL190787; GEHCDEL042864 – GEHCDEL042870; GEHCDEL140755 – GEHCDEL140764; GEHCDEL042853 – GEHCDEL042855; GEHCDEL042849 – GEHCDEL042851; GEHCDEL042839 – GEHCDEL042846; GEHCDEL190776 – GEHCDEL190782; GEHCDEL496032 – GEHCDEL496038; GEHCDEL474275 – GEHCDEL474318

Plaintiffs' investigation is ongoing, and Plaintiffs reserve the right to amend and/or supplement this response as additional facts become available through discovery.

INTERROGATORY NO. 2

State whether Plaintiff contends there are secondary considerations that should be considered by the Court in connection with its determination pursuant to 35 U.S.C. § 103 of the validity of each asserted claim of the Asserted Patents, and if the answer is anything other than an unqualified no for any claim, identify for that claim each such secondary consideration and describe in detail Plaintiffs' contentions as to why each such secondary consideration demonstrates obviousness or nonobviousness and all facts in support thereof, including any documents in support of such facts, testimony from past cases in support of such facts, and any persons with knowledge of such facts.

RESPONSE TO INTERROGATORY NO. 2:

GE incorporates its General Objections. GE objects to the interrogatory to the extent that it seeks information or documents covered by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity. GE also objects to this interrogatory on the grounds that it is overly broad and unduly burdensome to the extent that it seeks Plaintiffs to "describe in detail Plaintiffs' contentions as to why each such secondary consideration demonstrates obviousness or nonobviousness and all facts in support thereof." GE further objects to this interrogatory as compound and containing multiple subparts asserted in a single

GEHCDEL129324 – GEHCDEL129367; GEHCDEL129368 – GEHCDEL129374; GEHCDEL129375; GEHCDEL129376 – GEHCDEL129391; GEHCDEL129392 – GEHCDEL129401; GEHCDEL129424; GEHCDEL129425; GEHCDEL129426; GEHCDEL129427; GEHCDEL129428; GEHCDEL129429; GEHCDEL129463 – GEHCDEL129468; GEHCDEL129586; GEHCDEL129587; GEHCDEL129588; GEHCDEL129590; GEHCDEL129594 - GEHCDEL129602; GEHCDEL12980; GEHCDEL437004 - GEHCDEL437006; GEHC_0069390 – GEHC_0069399; GEHC_034403 – GEHC_034469; GEHC_070492 – GEHC_070500; GEHC_070585-GEHC_070591; GEHC_070606; GEHC_007444 – GEHC_007587; GEHC_007588 - GEHC_00802; GEHC_101283 – GEHC_101287; GEHC_158954 – GEHC_158970

Plaintiffs' investigation is ongoing, and Plaintiffs reserve the right to amend and/or supplement this response as additional facts become available through discovery.

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Dated: June 8, 2020

*Admitted in NY and CA only; practice limited to matters before federal courts and federal agencies

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EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

CYTIVA SWEDEN AB and GLOBAL LIFE SCIENCES SOLUTIONS USA LLC,	)	
Plaintiffs,	)	C.A. No. 18-1899-CFC Consolidated
v.	)	
BIO-RAD LABORATORIES, INC.,	)	
Defendant.	)	

PLAINTIFFS' SECOND SUPPLEMENTAL RESPONSES TO DEFENDANT BIO-RAD LABORATORIES, INC.'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs CYTIVA SWEDEN AB and Global Life Sciences Solutions USA LLC (collectively "Plaintiffs") hereby provide the following supplemental responses to the First Set of Interrogatories served by BIO-RAD LABORATORIES, INC. ("Bio-Rad"):

PRELIMINARY STATEMENT

Plaintiffs' investigation, discovery and analysis are ongoing, and Plaintiffs' response to each of these interrogatories is based on information and documents presently available to Plaintiffs after reasonable inquiry. Plaintiffs reserve the right to supplement or amend these responses in the event further information and/or documents are disclosed or discovered. In addition, Plaintiffs' responses are given without prejudice to its rights to introduce as evidence at trial any subsequently discovered or unintentionally omitted information and/or documents.

Specific objections to each of these interrogatories are made on an individual basis in the responses below. In addition to these specific objections, Plaintiffs make certain continuing objections ("General Objections") to the interrogatories. These General Objections are hereby incorporated by reference into the responses made to each separate interrogatory. For particular emphasis, Plaintiffs have, from time to time, expressly included one or more of the General Objections in certain of its responses below. Plaintiffs' response to each individual interrogatory is submitted without prejudice to, and without in any respect waiving, any General Objections not expressly set forth in that specific response. Accordingly, the inclusion of any specific objection in a response to an interrogatory below is neither intended as, nor shall in any way be deemed to be, a waiver of any General Objections or of any other specific objection made herein or that may be asserted at a later date. In addition, the failure to include at this time any continuing or specific objection to an interrogatory is neither intended as, nor shall in any way be deemed to be, a waiver of Plaintiffs' right to assert that or any other objection at a later date.

No incidental or implied admissions are intended by the responses herein. Plaintiffs' response and/or objections to a particular interrogatory shall not be taken as an admission that Plaintiffs accept or admits the existence of any "fact" set forth in or assumed by that interrogatory.

GENERAL OBJECTIONS

Plaintiffs make the following General Objections to Bio-Rad's interrogatories, including without limitation the instructions and definitions set forth therein, whether or not separately set forth in each response to each individual interrogatory.

1. Plaintiffs object to the interrogatories to the extent they seek information protected by any relevant privilege or legal protection, including, without limitation, the attorney-client privilege, the work product doctrine, the joint defense privilege, the settlement or settlement negotiation privilege, settlement materials, or trial preparation materials. Any statement herein to the effect that Plaintiffs will provide information in response to an interrogatory is limited to information that does not fall within the scope of any relevant privilege.

2. Plaintiffs object to the interrogatories to the extent they are overly broad, unduly burdensome or seek information that is irrelevant to any claim or defense and not reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiffs object to the interrogatories to the extent that they are vague, ambiguous, and use unlimited, undefined, subjective or open-ended terms or phrases.

4. Plaintiffs object to the interrogatories to the extent that the purported benefit of the discovery sought by the interrogatories is outweighed by the burden and expense of responding to the interrogatories pursuant to Rules 26(b)(1) and 26(b)(2) of the Federal Rules of Civil Procedure.

5. Plaintiffs object to the interrogatories to the extent they attempt to impose burdens on plaintiffs inconsistent with, or in excess of, the requirements of the Federal Rules of Civil Procedure, the Local Rules of this Court, and/or EU or Swedish privacy, data protection or any other applicable laws.

6. Plaintiffs object to the interrogatories to the extent they seek confidential, proprietary, trade secret, private or financial information that is protected from disclosure by any

applicable trade secret or privacy statute or law. Plaintiffs will provide such information only pursuant to the terms of a suitable protective order agreed to by the parties and entered by the court in this action, a suitable protective order entered by the court in response to a party's motion for protective order filed in the action, and/or with the consent of any third party that may claim confidentiality rights with respect to information responsive to the interrogatories.

7. Plaintiffs object to each interrogatory to the extent it seeks information regarding testifying experts, relating to the opinions of testifying experts, or subject to expert discovery in advance of any deadline set by the Court for experts in its April 20, 2020 Revised Scheduling Order.

8. Plaintiffs object to the interrogatories to the extent they seek information unknown to Plaintiffs, that refers to persons, entities or events not known to plaintiffs, or that relates to documents not within Plaintiffs' possession, custody, or control. Such a requirement would exceed Plaintiffs' obligations under the Federal Rules and would subject Plaintiffs to unreasonable and undue oppression, burden and expense. In responding to these interrogatories, Plaintiffs shall respond only on behalf of itself and shall not undertake the burden and expense of attempting to provide information presently unknown to Plaintiffs or relating to documents outside Plaintiffs' possession, custody, or control.

9. Plaintiffs object to the interrogatories to the extent they fail to specify a relevant time period, or to the extent any part of any specified time period is irrelevant to any claim or defense at issue in this case, on the grounds that the interrogatories are overly broad, unduly burdensome, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

10. Plaintiffs object to the terms "GE", "You", "Your" and "Plaintiffs" as defined in the interrogatories, as overly broad and unduly burdensome, to the extent the interrogatories purport to seek information relating to persons or entities that are separate and distinct from GE and over whom GE exercises no control. In responding to these interrogatories, GE shall interpret the terms "GE," "You," and "Plaintiffs" to refer only to Plaintiffs GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company.

11. Plaintiffs object to the definitions of the terms "Patents-in-Suit" and "Asserted Patents" as overly broad and unduly burdensome to the extent that the interrogatories purport to seek information relating to patents other than those specifically listed in the Complaint: U.S. Patent Nos. 9,709,589, 9,709,590, 9,709,591, and 9,671,420.

12. Plaintiffs object to the definition of the term "Related Patents" as vague, ambiguous, overly broad, unduly burdensome, and not proportional to the needs of the cases to the extent it seeks to include within its scope "any and all applications claiming priority to Patent Application No. 0950431-7 filed in Sweden on June 9, 2009 and/or to International Application No. PCT/SE2010/050624 filed on June 4, 2010…."

13. Plaintiffs object to the term "Documents" as vague, ambiguous, overly broad, and unduly burdensome.

14. Plaintiffs object to the term "Prior art" as vague, ambiguous, overly broad, and unduly burdensome to the extent it seeks to include within its scope "all systems, products, publications, articles, communications, or other documents describing or explaining [various topics] in existence prior to June 9, 2009."

15. Plaintiffs object to Bio-Rad's instructions as overly broad and unduly burdensome.

16. Each and all of these General Objections shall be deemed incorporated by reference into each and every objection made herein to a specific interrogatory.

17. Discovery and Plaintiffs' investigation in connection with this case are continuing. As a result, Plaintiffs' objections and responses are limited to information obtained and reviewed to date and are given without prejudice to Plaintiffs' right to amend or supplement its objections and responses after considering information or reviewed through further discovery. Plaintiffs reserve its rights to supplement its responses consistent with the applicable Federal Rules of Civil Procedure and the District of Delaware's Local Rules.

INTERROGATORIES

INTERROGATORY NO. 1:

For each claim of the Asserted Patents, describe in detail on an element-by-element basis, all facts relating to its conception and reduction to practice, including identifying each purported inventor, the date of conception, the date of reduction to practice of its subject matter, all acts you contend represent diligence occurring between the dates of conception and reduction to practice, each person involved in such conception, diligence and/or reduction to practice and each such person's specific contributions thereto, where the invention was first conceived and/or reduced to practice, when, where, and to whom the invention was first disclosed, and identifying each person, including third parties, who worked on any portion (no matter how trivial) of the subject matter, including any portion of the alleged invention(s) described and claimed in the Asserted Patents, describing in detail each person's role and the dates and places each such person assisted, supervised, or was otherwise so involved, and identifying all documents relating to these facts.

RESPONSE TO INTERROGATORY NO. 1:

GE incorporates its General Objections. GE objects to the interrogatory to the extent that it seeks information or documents covered by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity. GE also objects to this interrogatory on

the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this case to the extent that it seeks "all facts relating to its conception and reduction to practice" of each claim of the Asserted Patents. GE further objects to this interrogatory as compound and containing multiple subparts asserted in a single interrogatory.

Subject to its general and specific objections, GE responds as follows: GE will identify, pursuant to Federal Rule of Civil Procedure 33(d), documents for which the response to this interrogatory can be derived.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiffs hereby incorporate their objections and responses to Bio-Rad's Interrogatories in their entirety.

Subject to its general and specific objections, Plaintiffs supplement their response as follows: Each claim of the Asserted Patents were conceived by Johan Blomberg and Mats Lundquist in or around June of 2005 and reduced to practice no later than in or around December 2005. Additionally, purusant to Federal Rule of Procedure 33(d), Plaintiffs identify the following documents for which the response to this interrogatory can be derived:

GEHC_021910 – GEHC_021918; GEHC_021919 – GEHC_021934; GEHC_026813 – GEHC_026814; GEHC_027017 – GEHC_027017; GEHC_029487 – GEHC_029488; GEHC_029489 – GEHC_029489; GEHC_029491 – GEHC_029491; GEHC_048484 – GEHC_048490; GEHC_048492 – GEHC_048498; GEHC_048544 – GEHC_048554; GEHC_050578 – GEHC_050582; GEHC_050583 – GEHC_050587; GEHC_050589 – GEHC_050594; GEHC_050600 – GEHC_050605; GEHC_050606 – GEHC_050615; GEHC_050616 – GEHC_050626; GEHC_050639 – GEHC_050646; GEHC_050647 – GEHC_050652; GEHC_050653 – GEHC_050663; GEHC_050664 – GEHC_050669; GEHC_050670 – GEHC_050678; GEHC_050679 – GEHC_050684; GEHC_050685 – GEHC_050692; GEHC_050697 – GEHC_050704; GEHC_050705 – GEHC_050711; GEHC_051363 – GEHC_051369; GEHC_051498 – GEHC_051498; GEHC_051499 – GEHC_051499; GEHC_063219 – GEHC_063221; GEHC_063222 – GEHC_063223; GEHC_063224 – GEHC_063225; GEHC_063230 – GEHC_063231; GEHC_063232 – GEHC_063233; GEHC_063234 – GEHC_063235; GEHC_063236 – GEHC_063238;

GEHC_063239 – GEHC_063243; GEHC_063244 – GEHC_063247; GEHC_063248 – GEHC_063251; GEHC_063252 – GEHC_063258; GEHC_063396 – GEHC_063403; GEHC_066650 – GEHC_066650; GEHC_066651 – GEHC_066651; GEHC_066653 – GEHC_066653; GEHC_072888 – GEHC_072896; GEHC_072897 – GEHC_072908; GEHC_180199 – GEHC_180205; GEHC_185779 – GEHC_185779; GEHC_185780 – GEHC_185780; GEHC_185781 – GEHC_185781; GEHC_188868 – GEHC_188875; GEHC_138865 – GEHC_138866; GEHC_138867 – GEHC_138868; GEHC_138869 – GEHC_138870; GEHC_138871 – GEHC_138872; GEHC_138873 – GEHC_138874; GEHC_138875 – GEHC_138876; GEHC_138877 – GEHC_138879; GEHC_138880 – GEHC_138881; GEHC_138952 – GEHC_138953; GEHC_144475 – GEHC_144478; GEHC_144479 – GEHC_144481; GEHC_144482 – GEHC_144485; GEHC_144486 – GEHC_144490; GEHC_144491 – GEHC_144496; GEHC_144497 – GEHC_144502; GEHC_144503 – GEHC_144507; GEHC_144508 – GEHC_144514; GEHC_144515 – GEHC_144519; GEHC_144520 – GEHC_144527; GEHC_156415 – GEHC_156417; GEHCDEL495087 – GEHCDEL495088; GEHCDEL492820 – GEHCDEL492826; GEHCDEL472253 – GEHCDEL472256; GEHCDEL042936 – GEHCDEL042938; GEHCDEL496160 – GEHCDEL496162; GEHCDEL042930 – GEHCDEL042933; GEHCDEL496154 – GEHCDEL496157; GEHCDEL042926 – GEHCDEL042928; GEHCDEL042921 – GEHCDEL042924; GEHCDEL496145 – GEHCDEL496148; GEHCDEL042918 – GEHCDEL042919; GEHCDEL496142 – GEHCDEL496143; GEHCDEL042908 – GEHCDEL042911; GEHCDEL042912 – GEHCDEL042916; GEHCDEL496132 – GEHCDEL496135; GEHCDEL496136 – GEHCDEL496140; GEHCDEL042898 – GEHCDEL042902; GEHCDEL496122 – GEHCDEL496126; GEHCDEL042891 – GEHCDEL042896; GEHCDEL496110 – GEHCDEL496114; GEHCDEL042884 – GEHCDEL042889; GEHCDEL496103 – GEHCDEL496108; GEHCDEL190799 – GEHCDEL190802; GEHCDEL042877 – GEHCDEL042882; GEHCDEL496096 – GEHCDEL496101; GEHCDEL042872 – GEHCDEL042875; GEHCDEL490361 – GEHCDEL490362; GEHCDEL190790 – GEHCDEL190797; GEHCDEL190784 – GEHCDEL190787; GEHCDEL042864 – GEHCDEL042870; GEHCDEL140755 – GEHCDEL140764; GEHCDEL042853 – GEHCDEL042855; GEHCDEL042849 – GEHCDEL042851; GEHCDEL042839 – GEHCDEL042846; GEHCDEL190776 – GEHCDEL190782; GEHCDEL496032 – GEHCDEL496038; GEHCDEL474275 – GEHCDEL474318

Plaintiffs' investigation is ongoing, and Plaintiffs reserve the right to amend and/or supplement this response as additional facts become available through discovery.

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Plaintiffs hereby incorporate their objections and responses to Bio-Rad's Interrogatories

in their entirety.

Subject to its general and specific objections, Plaintiffs supplement their response as follows:

Each Asserted Claim of the ’124, ’420, ’589, ’590, and ’591 Patents was conceived by Johan Blomberg and Mats Lundquist no later than August 2006 and reduced to practice no later than October 2006.

The inventors and those working in conjunction with them were reasonably and continuously diligent in reducing their inventions to practice.

Pursuant to Federal Rule of Procedure 33(d), Plaintiffs identify the following additional documents for which responsive information to this interrogatory can be derived:

GEHC_047703 - GEHC_047731; GEHC_063106 - GEHC_063118; GEHC_069852 - GEHC_069881; GEHC_078582 - GEHC_078601; GEHC_078689 - GEHC_079737; GEHC_128523 - GEHC_128560; GEHC_137189 - GEHC_137192; GEHC_138846 - GEHC_138846; GEHC_138847 - GEHC_138847; GEHC_138848 - GEHC_138851; GEHC_138852 - GEHC_138853; GEHC_138854 - GEHC_138855; GEHC_138856 - GEHC_138857; GEHC_138865 - GEHC_138866; GEHC_138867 - GEHC_138868; GEHC_138869 - GEHC_138870; GEHC_138871 - GEHC_138872; GEHC_138873 - GEHC_138874; GEHC_138875 - GEHC_138876; GEHC_138877 - GEHC_138879; GEHC_138880 - GEHC_138881; GEHC_138882 - GEHC_138884; GEHC_138885 - GEHC_138887; GEHC_138888 - GEHC_138890; GEHC_138891 - GEHC_138892; GEHC_138893 - GEHC_138895; GEHC_138896 - GEHC_138899; GEHC_138900 - GEHC_138902; GEHC_138903 - GEHC_138905; GEHC_138906 - GEHC_138909; GEHC_138911 - GEHC_138914; GEHC_138915 - GEHC_138917; GEHC_138918 - GEHC_138921; GEHC_138922 - GEHC_138925; GEHC_138926 - GEHC_138929; GEHC_138930 - GEHC_138933; GEHC_138934 - GEHC_138937; GEHC_138938 - GEHC_138941; GEHC_138942 - GEHC_138943; GEHC_138944 - GEHC_138944; GEHC_138949 - GEHC_138951; GEHC_138949 - GEHC_138951.; GEHC_188470 - GEHC_188472; GEHCDEL000661 - GEHCDEL000665; GEHCDEL042568 - GEHCDEL042575; GEHCDEL042579 - GEHCDEL042586; GEHCDEL042589 - GEHCDEL042596; GEHCDEL042603 - GEHCDEL042609; GEHCDEL042611 - GEHCDEL042618; GEHCDEL042621 - GEHCDEL042628; GEHCDEL046238 - GEHCDEL046241; GEHCDEL127450 - GEHCDEL127455; GEHCDEL190566 - GEHCDEL190574; GEHCDEL190608 - GEHCDEL190615; GEHCDEL191586 - GEHCDEL191589; GEHCDEL436098 - GEHCDEL436101; GEHCDEL437634 -

GEHCDEL437672; GEHCDEL472219 - GEHCDEL472246; GEHCDEL476681 - GEHCDEL476684; GEHCDEL487848 - GEHCDEL487850; GEHCDEL487848 - GEHCDEL487850; GEHCDEL490345 - GEHCDEL490347; GEHCDEL492787 - GEHCDEL492790; GEHCDEL495500 - GEHCDEL495508; GEHCDEL495536 - GEHCDEL495543; GEHCDEL495547 - GEHCDEL495554; GEHCDEL495557 - GEHCDEL495564; GEHCDEL495578 - GEHCDEL495584; GEHCDEL495586 - GEHCDEL495593; GEHCDEL495609 - GEHCDEL495616; GEHCDEL495654 - GEHCDEL495662; GEHCDEL495775 - GEHCDEL495782; GEHCDEL497476 - GEHCDEL497479; GEHCDEL042558 - GEHCDEL042566

INTERROGATORY NO. 2

State whether Plaintiff contends there are secondary considerations that should be considered by the Court in connection with its determination pursuant to 35 U.S.C. § 103 of the validity of each asserted claim of the Asserted Patents, and if the answer is anything other than an unqualified no for any claim, identify for that claim each such secondary consideration and describe in detail Plaintiffs' contentions as to why each such secondary consideration demonstrates obviousness or nonobviousness and all facts in support thereof, including any documents in support of such facts, testimony from past cases in support of such facts, and any persons with knowledge of such facts.

RESPONSE TO INTERROGATORY NO. 2:

GE incorporates its General Objections. GE objects to the interrogatory to the extent that it seeks information or documents covered by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity. GE also objects to this interrogatory on the grounds that it is overly broad and unduly burdensome to the extent that it seeks Plaintiffs to "describe in detail Plaintiffs' contentions as to why each such secondary consideration demonstrates obviousness or nonobviousness and all facts in support thereof." GE further objects to this interrogatory as compound and containing multiple subparts asserted in a single interrogatory. GE further objects to the extent this interrogatory seeks legal conclusions or prematurely seeks expert opinion. GE further objects to this interrogatory to the extent it is attempting to shift the burden of proof on invalidity to GE. GE further objects to this interrogatory as premature given the Court's Scheduling Order.

July 24, 2020

__/s/ *Ryan M. Nishimoto* _____

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CERTIFICATE OF SERVICE

I, Michael J. Sebba, hereby certify that on July 24, 2020, this document was served on the persons listed below in the manner indicated:

BY EMAIL

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EXHIBIT 5

From: Felipe Corredor
Sent: Thursday, August 6, 2020 5:18 PM
To: Nishimoto, Ryan M. <Ryan.Nishimoto@arnoldporter.com>
Cc: Silverstein, Alan R. <asilverstein@potteranderson.com>; bpalapura@potteranderson.com; dmoore@potteranderson.com; Brge Team <BrgeTeam@quinnemanuel.com>; SKGEHealthcare <SKGEHealthcare@shawkeller.com>; jshaw@shawkeller.com; GE - BioRad <GE-BioRad@arnoldporter.com>
Subject: RE: Cytiva v. Bio-Rad, No. 18-1899 - discovery meet and confer

Ryan,

As to points (1) (Cytiva's improper supplemental response to Interrogatory No. 1) and (4) (privilege issues), the parties are at an impasse.

However, your email on point (4) makes very concerning, unfounded accusations. As we have stated before, Mr. Bilsker had no indication that Exhibit 67 was privileged; it was among his preparation materials in connection with the conception and reduction to practice 30(b)(6) topic Mr. Lundkvist was designated on. You still have provided no explanation whatsoever for how Mr. Bilsker could have known it was privileged while you, defending the deposition (with superior information on Plaintiffs' documents than Mr. Bilsker) and with Mr. Sorby attending, sat through Mr. Bilsker's long line of questioning regarding Exhibit 67 and never thought to claw it back on privilege grounds. Given the lack of any indication of privilege, either from the document or from yourself, Mr. Bilsker believed it was either not privileged or, if it was, Plaintiffs intentionally produced it in order to rely on it.

Your unfounded accusations to the contrary are extremely concerning. As you know, making accusations of ethical violations in order to gain an advantage in civil litigation, such as by trying to rectify a mistake you made in failing to claw back a document Plaintiffs have now decided is privileged, is itself contrary to your ethical obligations as an attorney. See Cal. Bar Rule of Prof. Conduct 3.10. Your accusations are further not well taken given Mr. Sebba's conduct at the Lee deposition; there, in the face of a prompt and explicit assertion of privilege over an inadvertently produced slide by Bio-Rad, Mr. Sebba went off the record in order to continue reviewing the privileged slide notwithstanding Bio-Rad's assertion of privilege over that slide and to make arguments against privilege based on the slide's content. Lee Rough Tr. 82:12-84:9. Plaintiffs should not be so quick to make unfounded accusations of ethical violations given your own team's failure to refrain from examining a slide over which Bio-Rad had asserted privilege.

As to point (2) (documents submitted to regulators), we would like to understand better what Cytiva's position is, including whether documents exist at all. A meet and confer might be productive.

As to claim and prior art narrowing, a meet and confer would also be productive.

Please provide Plaintiffs' availability for a meet and confer tomorrow.

Regards,
Felipe

Felipe Corredor
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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From: Nishimoto, Ryan M. [mailto:Ryan.Nishimoto@arnoldporter.com]
Sent: Wednesday, August 5, 2020 2:56 PM
To: Felipe Corredor <felipecorredor@quinnemanuel.com>
Cc: Silverstein, Alan R. <asilverstein@potteranderson.com>; bpalapura@potteranderson.com; dmoore@potteranderson.com; Brge Team <BrgeTeam@quinnemanuel.com>; SKGEHealthcare <SKGEHealthcare@shawkeller.com>; jshaw@shawkeller.com; GE - BioRad <GE-BioRad@arnoldporter.com>
Subject: RE: Cytiva v. Bio-Rad, No. 18-1899 - discovery meet and confer

[EXTERNAL EMAIL]

Hi Felipe --

We agree that these issues discussed on July 30 need to be resolved expeditiously and may not drag on indefinitely.

On (1), Bio-Rad has not articulated how it is unable to obtain the discovery it needs to address Cytiva's supplemental interrogatory response, and we again invite Bio-Rad to let us know what that might be.

On (2), Cytiva maintains its position that it has satisfied its discovery obligations by producing the documents sought by Bio-Rad's formal requests. Moreover, based on preliminary investigation, Cytiva does not believe it has discoverable documents of the type sought.

On (4), we disagree with Bio-Rad's position that Cytiva has waived privilege/work product as to Ex. 67. None of the testimony provided by Mr. Lundkvist divulged any privileged information relating to Ex. 67. In fact, Mr. Lundkvist had never seen the document before, didn't know who prepared it, and did not recognize the text contained in the document. As to counsel's obligations, the minute Mr. Bilker suspected that the document may have been privileged -- which appears to be suggested by his ensuing comment that Mr. Lundkvist may have somehow "waived" a privilege -- Mr. Bilsker had an ethical obligation under Cal. Bar Rule of Prof. Conduct 4.4 to refrain from examining it any more than was necessary to determine it was privileged or work product. Bio-Rad's counsel is well aware of this obligation, as you have notified us of such inadvertent production in the past. *See* June 1, 2020 F. Corredor email. The *Luna Gaming* case cited in your email is readily distinguishable as, for example, none of Mr. Lundkvist's testimony that included privileged information, nor was Ex. 67 used in subsequent depositions or in court filings prior to it being clawed back.

As to claim narrowing, please provide us with a proposal that includes a corresponding reduction in prior art references.

Best regards,
Ryan

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From: Felipe Corredor <felipecorredor@quinnemanuel.com>
Sent: Wednesday, August 5, 2020 11:59 AM
To: Nishimoto, Ryan M. <Ryan.Nishimoto@arnoldporter.com>
Cc: Silverstein, Alan R. <asilverstein@potteranderson.com>; zzz.External.bpalapura@potteranderson.com <bpalapura@potteranderson.com>; zzz.External.dmoore@potteranderson.com <dmoore@potteranderson.com>; Brge Team <BrgeTeam@quinnemanuel.com>; SKGEHealthcare <SKGEHealthcare@shawkeller.com>; zzz.External.jshaw@shawkeller.com <jshaw@shawkeller.com>; GE - BioRad <GE-BioRad@arnoldporter.com>
Subject: RE: Cytiva v. Bio-Rad, No. 18-1899 - discovery meet and confer

External E-mail

Ryan,

We have not heard back on the below. Please respond to provide at least Plaintiffs' position on the documents submitted to regulatory authorities as testified to by Dr. Darby, as you said you would by Tuesday, and Plaintiffs' position on claim narrowing. We are available to meet and confer on the latter tomorrow morning.

Regards,
Felipe

Felipe Corredor
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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San Francisco, CA 94111
415-875-6448 Direct
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From: Felipe Corredor
Sent: Monday, August 3, 2020 1:19 PM
To: Nishimoto, Ryan M. <Ryan.Nishimoto@arnoldporter.com>
Cc: Silverstein, Alan R. <asilverstein@potteranderson.com>; bpalapura@potteranderson.com; dmoore@potteranderson.com; Brge Team <BrgeTeam@quinnemanuel.com>; SKGEHealthcare <SKGEHealthcare@shawkeller.com>; jshaw@shawkeller.com; GE - BioRad <GE-BioRad@arnoldporter.com>
Subject: RE: Cytiva v. Bio-Rad, No. 18-1899 - discovery meet and confer

Ryan,

We disagree with the characterizations in your email.

On the initial matter, we agreed that the parties will not object to motions initiated after the fact discovery period on the issues discussed on the July 30 meet and confer on the grounds of timeliness as long as the parties' continuing resolution efforts take place expeditiously this week, but we did not agree to allow these issues to drag on indefinitely.

On the first issue, the prejudice to Bio-Rad is significant, as Plaintiffs' complete change of their response to Interrogatory No. 1 a week prior to the close of fact discovery, after depositions on conception and reduction to practice were complete, including both percipient and fact witnesses, completely alters Bio-Rad's litigation strategy and gives Plaintiffs an unfair tactical advantage through its sandbagging. Such prejudice cannot be ameliorated.

On the second issue, we look forward to receiving Plaintiffs' position tomorrow.

On the third issue, we are in receipt of Plaintiffs' supplemental responses and are still evaluating them.

On the fourth issue (privilege), the relevant portions of Mr. Lundkvist's testimony include Tr. at 237:1-242:16. This series of pages shows that the invention disclosure statement, Exhibit 67, was discussed for numerous pages without any indication from you that it was privileged. This was even true in light of subsequent questioning in the same area where you instructed the witness not to divulge communications with attorneys. There was further discussion about waiver on the record, and yet you never indicated or attempted to claw back Exhibit 67. In addition, as I noted during the meet and confer, Plaintiffs and Bio-Rad do not have access to the same information about Exhibit 67—Plaintiffs obviously have superior knowledge about its origins and import. Mr. Bilsker did not know or suspect Exhibit 67 was privileged both because it was not marked as such and because parties can waive privilege in an attempt to rely on some documents that support their position and you never objected to the use of the document despite a significant amount of question about it. Mr. Lundkvist's testimony, your reticence, and Mr. Sorby's knowledge and attendance at Mr. Lundkvist's deposition, should have prompted Plaintiffs to claw back the document at the deposition if their position was that it was a privileged document. *See, e.g.*, *Luna Gaming–San Diego, LLC v. Dorsey & Whitney, LLP*, 2010 WL 275083, at *5 (S.D .Cal. Jan. 13, 2010). Moreover, leaving aside the issue of waiver resulting from Exhibit 67, patent application materials that were not communicated between an attorney and client are not even subject to the attorney-client privilege.

Finally, upon further review of the Sorby transcript, Bio-Rad will forego a motion to compel answers to questions he was instructed not to answer on privilege grounds.

In addition, I note that Bio-Rad also raised, but you have omitted from your email, the issue of patent claim narrowing. Please promptly provide Plaintiffs' position on claim narrowing, including timing of such narrowing sufficiently in advance of the opening expert report deadline. To the extent Plaintiffs are not prepared to expeditiously agree to claim narrowing, we request a meet and confer on this issue, as Bio-Rad may have no choice but to seek relief from the Court.

Regards,
Felipe

Felipe Corredor
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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From: Nishimoto, Ryan M. [mailto:Ryan.Nishimoto@arnoldporter.com]
Sent: Thursday, July 30, 2020 6:54 PM
To: Felipe Corredor <felipecorredor@quinnemanuel.com>
Cc: Silverstein, Alan R. <asilverstein@potteranderson.com>; bpalapura@potteranderson.com; dmoore@potteranderson.com; Brge Team <BrgeTeam@quinnemanuel.com>; SKGEHealthcare <SKGEHealthcare@shawkeller.com>; jshaw@shawkeller.com; GE - BioRad <GE-BioRad@arnoldporter.com>
Subject: RE: Cytiva v. Bio-Rad, No. 18-1899 - discovery meet and confer

[EXTERNAL EMAIL]

Hi Felipe --

We write to memorialize the parties' meet-and-confer efforts this afternoon with respect to the issues raised in your July 28 email below.

As an initial matter, we agreed that the parties' respective issues should be subject to further efforts toward resolution, and that the parties will not object to motions initiated after the fact discovery period on the subjects we discussed today on the grounds of timeliness (including the issues raised by Cytiva regarding source code review and our July 29 letter).

On the first issue (Cytiva's supplemental response to interrogatory no. 1), Bio-Rad had not considered whether there was any way to ameliorate its alleged prejudice. You agreed that Bio-Rad would provide this, to the extent it has an answer.

On the second issue (documents testified to by Dr. Darby and requested in Bio-Rad's letters of July 7 and July 14), you confirmed that Bio-Rad's July 28 request was not intended to expand the scope of the request as set forth in its July 7 and 14 letters. We agreed to consider the issue and provide a further response tomorrow (Friday) 7/31.

On the third issue (supplemental responses to interrogatory nos. 3, 4, and 9), we confirmed that Cytiva would serve these supplemental responses tomorrow (Friday) 7/31.

On the fourth issue (privilege clawback):

- Bio-Rad agreed to send cites to Mr. Lundkvist's testimony that allegedly waived privilege and to Mr. Sorby's deposition transcript as to the specific objections/instructions with which Bio-Rad takes issue.
- We also discussed whether Bio-Rad's counsel knew or suspected that the document Mr. Bilsker used during the deposition of Mr. Lundkvist (Ex. 67) was privileged during the deposition. We understood your response to be that Bio-Rad's counsel did not know this document was privileged, and apparently was not aware of this fact until the clawback notice issued. Please let us know if we misunderstood your statements.
- Finally, Bio-Rad agreed to send authority supporting the idea of waiver where neither counsel nor the witness at deposition knew document was privileged.

Best regards,
Ryan

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Mobile: +1 323.336.5165
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From: Felipe Corredor <felipecorredor@quinnemanuel.com>
Sent: Tuesday, July 28, 2020 1:58 PM
To: Boyd, Bridgette <Bridgette.Boyd@arnoldporter.com>; Silverstein, Alan R. <asilverstein@potteranderson.com>; zzz.External.bpalapura@potteranderson.com <bpalapura@potteranderson.com>; zzz.External.dmoore@potteranderson.com <dmoore@potteranderson.com>; Brge Team <BrgeTeam@quinnemanuel.com>
Cc: Miller, Jeffrey <Jeffrey.Miller@arnoldporter.com>; SKGEHealthcare <SKGEHealthcare@shawkeller.com>; zzz.External.jshaw@shawkeller.com <jshaw@shawkeller.com>; GE - BioRad <GE-BioRad@arnoldporter.com>
Subject: Cytiva v. Bio-Rad, No. 18-1899 - discovery meet and confer

Counsel,

We write to request a meet and confer on the below issues on Wednesday morning (PT) or Thursday after 3pm PT. Please let us know what time works for you.

First, Plaintiffs' second supplemental response to Interrogatory No. 1, served on Friday July 24, is entirely untimely and prejudicial. Bio-Rad believes it is not appropriate for Plaintiffs to change their conception/reduction to practice timeline and cited documents after all depositions of Plaintiffs' witnesses have been completed, nearly a month after the deposition of named inventor Mr. Lundkvist (Plaintiffs' 30(b)(6) witness on the relevant Topic No. 34), and just a week before the close of fact discovery, under the guise of a "supplementation." Moreover, all of the documents cited in the "supplementation" have been in Plaintiffs' possession since long before Mr. Lundkvist's deposition.

Second, given Plaintiffs' failure to produce the documents discussing Lab AKTA products that were submitted to regulatory authorities in connection with the Danaher acquisition, as testified to by Dr. Darby and requested in Bio-Rad's letters of July 7 and July 14, Bio-Rad intends to move to compel production of such documents.

Third, given Plaintiffs' failure to supplement their responses to Interrogatory Nos. 3 and 4 despite agreeing to do so weeks ago, Bio-Rad intends to move to compel those supplemental responses. Relatedly, now that the depositions of Bio-Rad's 30(b)(6) designees on damages-related topics have concluded, Bio-Rad also expects Plaintiffs to timely supplement their response to Interrogatory No. 9.

Finally, regarding the motion to compel production of purportedly privileged documents on which the parties have previously met and conferred, Bio-Rad intends to also include improper privilege objections and instructions not to answer made at the Sorby deposition.

Regards,
Felipe

Felipe Corredor
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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EXHIBIT 6

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

GE HEALTHCARE BIO-SCIENCES AB, GE HEALTHCARE BIO-SCIENCES CORPORATION, and GENERAL ELECTRIC COMPANY, Plaintiffs, v. BIO-RAD LABORATORIES, INC., Defendant and Counterclaim Plaintiff.	)	Civil Action No. 1:14-cv-07080-LTS-SN

DEFENDANT BIO-RAD LABORATORIES, INC.'S
THIRD SET OF REQUESTS FOR PRODUCTION

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Bio-Rad Laboratories, Inc. ("Bio-Rad") requests that Plaintiffs GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company produce for inspection and copying the documents and things set forth below at the offices of Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, NY 10010 within thirty (30) days of service.

DEFINITIONS

As used herein, the terms listed below shall be defined as follows. Insofar as a term is not explicitly defined, the meaning to be used is the commonly accepted definition of the term. Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests for Production is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. In these Requests for Production, the following terms are to be given their ascribed definitions:

1. In accordance with Local Civil Rule 26.3, the terms "Plaintiff" and "Defendant" as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

2. "Plaintiffs," "GE," "You," and "Your" shall refer to Plaintiffs GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company, individually and collectively, including, without limitation, all corporate locations of each, and all predecessors, predecessors-in-interest, subsidiaries, parents, and affiliates, and all past or present directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in joint venture, licensing agreements, or partnership relationships with respondent and others acting on behalf of respondent.

3. "Bio-Rad" shall refer to Defendant Bio-Rad Laboratories, Inc. and all its predecessors or successors, parents, divisions, subsidiaries, and affiliates thereof, and all officers, agents, employees, counsel and other persons acting on its behalf.

4. "'718 patent" shall mean U.S. Patent No. 8,821,718 and all parents, progeny, continuations, applications, divisional applications, reexaminations, or reissues thereof and all foreign counterpart applications and patents which claim the same subject matter.

5. The terms "referring to," "relating to," "showing," or "regarding" shall mean containing, describing, discussing, embodying, commenting upon, identifying, incorporating, summarizing, constituting, comprising, or otherwise pertinent to the matter or any aspect thereof.

6. "Modular preparative protein purification systems" refers to all systems featuring a "modular panel design allowing for interchangeable placement of the fluid handing units and

which separated the fluidics section from the non-fluidics section," as defined in paragraph 11 of the Declaration of Nigel Darby in Support of Plaintiffs' Motion for a Preliminary Injunction. (Dkt. 11.)

7. In accordance with Local Civil Rule 26.3, the term "document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Federal Rule of Civil Procedure 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.

8. In accordance with Local Civil Rule 26.3, the term "identify" with respect to a document means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Federal Rule of Civil Procedure 33(d).

9. In accordance with Local Civil Rule 26.3, "person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

10. In accordance with Local Civil Rule 26.3, the term "identify" with respect to a person means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

11. In accordance with Local Civil Rule 26.3, the terms "all," "any," and "each" shall each be construed as encompassing any and all.

12. In accordance with Local Civil Rule 26.3, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

13. In accordance with Local Civil Rule 26.3, the use of the singular form of any word includes the plural and vice versa.

14. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.

INSTRUCTIONS

The following instructions apply to these Requests for Production and should be considered as a part of each such Request for Production.

1. Each document is to be produced along with all non-identical drafts thereof in their entirety, without abbreviation or redaction.

2. All documents shall be produced in the order that they are kept in the usual course of business, and shall be produced in their original folders, binders, covers or containers, or photocopies thereof.

3. In the event that any document called for by these requests or subsequent requests is to be withheld on the basis of the attorney-client privilege, work-product doctrine, or any other privilege or immunity, that document is to be identified by stating (i) the author(s), addressee(s), and any indicated or blind copyee(s); (ii) the document's date, number of pages and attachments or appendices; (iii) the subject matter(s) of the document; (iv) the nature of the privilege or immunity asserted; and (v) any additional facts on which You would base Your claim of privilege or immunity.

4. These Requests for Production shall be deemed continuing so as to require further and supplemental production in accordance with the Federal Rules of Civil Procedure.

5. State, for each request, whether or not there exist any documents within the scope of the request and whether any such documents are in Your possession, custody, or control.

6. Any response made by reference to documents shall identify by document production number each responsive document.

7. All documents that respond, in whole or in part, to any portion of any request shall be produced in their entirety, including all attachments and enclosures.

8. Color copies of documents are to be produced where color is necessary to interpret or understand the contents.

9. The source(s) or derivation of each document produced shall be specifically identified.

10. In the event that any document called for by these requests or subsequent requests has been destroyed or discarded, that document is to be identified by stating: (i) the author(s), addressee(s), and any indicated or blind copyee(s); (ii) the document's date, number of pages and attachments or appendices; (iii) the document's subject matter; (iv) the date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (v) the persons who were authorized to carry out such destruction or discard; and (vi) whether any copies of the document presently exist and, if so, the name of the custodian of each copy.

11. Electronic records and computerized information must be produced in their native electronic format, together with a description of the system from which they were derived sufficient to permit rendering the records and information intelligible.

12. If your response to a particular request for production is a statement that you lack the ability to comply with that request, you must specify whether the inability to comply is because the particular item or category of information never existed, has been destroyed, has

been lost, misplaced, or stolen, or has never been, or is no longer, in your possession, custody, or control, in which case the name and address of any person or entity known or believed by you to have possession, custody, or control of that information or category of information must be identified.

13. Unless otherwise indicated in a particular request, the request is not date or time limited.

14. Where an identified document is in a language other than English, state whether an English translation of such document exists. If a document is in a language other than English and an English translation exists, identify and provide both documents.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 55:

Documents sufficient to show whether a third party supplied any of the modules used in the ÄKTA pure or avant systems.

REQUEST FOR PRODUCTION NO. 56:

Documents sufficient to show whether the modules used in the ÄKTA pure or avant systems were specifically designed for use in those systems.

REQUEST FOR PRODUCTION NO. 57:

Documents sufficient to show whether the modules used in the ÄKTA pure or avant systems existed prior to development of those systems.

REQUEST FOR PRODUCTION NO. 58:

Documents sufficient to identify individuals who participated in negotiations with third-party suppliers of components for the ÄKTA pure or avant systems on behalf of Plaintiffs.

REQUEST FOR PRODUCTION NO. 59:

Documents sufficient to show whether any third-party modules were considered for use in the ÄKTA pure or avant systems.

REQUEST FOR PRODUCTION NO. 60:

Documents sufficient to show evaluations and feasibility studies regarding the use of third-party modules in the ÄKTA pure or avant systems.

REQUEST FOR PRODUCTION NO. 61:

Documents sufficient to identify individuals responsible for Plaintiffs' evaluations and feasibility studies regarding the use of third-party modules in the ÄKTA pure or avant systems.

REQUEST FOR PRODUCTION NO. 62:

Documents sufficient to identify individuals responsible for designing modules for use in the ÄKTA pure or avant systems.

REQUEST FOR PRODUCTION NO. 63:

Documents sufficient to show whether individuals substantively involved in the design and development of the ÄKTA pure or avant systems, including the '718 patent's inventors, knew about the Gilson 402 Syringe Pump or the Tecan Cavro XLP 6000 Modular Syringe Pump.

REQUEST FOR PRODUCTION NO. 64:

Documents sufficient to show GE's market share in the market for modular preparative protein purification systems.

REQUEST FOR PRODUCTION NO. 65:

Documents sufficient to show GE's market share in the market for liquid chromatography systems operating in the medium pressure range of 35-50 psi.

REQUEST FOR PRODUCTION NO. 66:

Documents sufficient to show any efforts by GE to increase or maintain its market share in the market for modular preparative protein purification systems.

REQUEST FOR PRODUCTION NO. 67:

Documents sufficient to show efforts by GE to increase or maintain its market share in the market for liquid chromatography systems operating in the medium pressure range of 35-50 psi.

REQUEST FOR PRODUCTION NO. 68:

Documents sufficient to identify any companies that GE believes participate in the market for modular preparative market.

REQUEST FOR PRODUCTION NO. 69:

Documents sufficient to identify any companies that GE believes participate in the market for liquid chromatography systems operating in the medium pressure range of 35-50 psi.

REQUEST FOR PRODUCTION NO. 70:

Documents sufficient to show any studies or evaluations of GE's share in the market for modular preparative protein purification systems.

REQUEST FOR PRODUCTION NO. 71:

Documents sufficient to show any studies or evaluations of GE's share in the market for liquid chromatography systems operating in the medium pressure range of 35-50 psi.

Dated: October 30, 2015

Respectfully submitted,

By: */s/ Felipe Corredor*

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Attorney for Defendant and Counterclaim-Plaintiff Bio-Rad Laboratories, Inc.

CERTIFICATE OF SERVICE

I certify that on October 30, 2015, I caused a true and correct copy of the foregoing to be served via e-mail on the following counsel for Plaintiffs GE Healthcare Bio-Science AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company.

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/s/ Felipe Corredor
Felipe Corredor

EXHIBIT 8

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

FTC Imposes Conditions on Danaher Corporation's Acquisition of GE Biopharma

March 19, 2020

Merger likely to reduce competition in highly concentrated markets that supply biopharmaceutical companies with key inputs

FOR RELEASE

TAGS: biologics | international cooperation | Health Care | Prescription Drugs | Manufacturing | Pharmaceuticals | Bureau of Competition | Competition | Merger

Danaher Corporation has agreed to divest assets to settle Federal Trade Commission charges that its proposed $21.4 billion acquisition of General Electric's biopharmaceutical business, GE Biopharma, would violate federal antitrust law.

The FTC alleges that the proposed acquisition would substantially lessen competition in the United States (and potentially the rest of the world) in highly concentrated product markets for ten products that companies use to manufacture biopharmaceutical drugs.

Danaher will divest to Sartorius AG all rights and assets to research, develop, manufacture, market, and sell these products. Based in Germany, Sartorius provides bioprocessing equipment and other products to the life sciences industry.

The products to be divested include:

Microcarrier Beads. Used in cell culture bioprocessing, microcarrier beads provide a surface to grow cells. Danaher and GE are the two leading global suppliers, and each other's closest competitors. The acquisition as proposed would reduce the number of major suppliers from three to two.

Conventional Low-Pressure Liquid Chromatography Columns. Conventional LPLC columns are containers that hold chromatography resins used as the adsorbent during the stationary phase. There are only three main suppliers, including Danaher and GE, both of which hold a significant share of the market.

Conventional Low-Pressure Liquid Chromatography Skids. These systems of pumps, valves, sensors, tubing, electronic components, software, and flow paths control the flow of liquid in the columns. GE is the leading supplier; GE and Danaher compete directly in this market; and there are few other significant suppliers.

Single-Use Low Pressure Liquid Chromatography Skids. These skids control the flow of liquid in the same way as conventional liquid chromatography skids, except certain components are disposable. GE is the dominant supplier, and GE and Danaher are two of only three significant suppliers.

Chromatography Resins. These chemically-treated resins constitute the stationary phase in chromatography. Each resin type differs in its chemical characteristics and uses, and each type constitutes a distinct antitrust market. GE and Danaher have competitively significant overlaps in three resin markets: affinity resins, ion exchange resins, and mixed

mode resins. GE is the dominant supplier of chromatography resins, and Danaher is a significant, independent competitor.

Low-Pressure Liquid Chromatography Continuous Chromatography Systems. LPLC continuous chromatography systems allow for the simultaneous processing of multiple columns in LPLC. These systems consist of pumps, valves, sensors, tubing, electronic components, software, and flow paths composed of either multi-use or single-use components. Danaher and GE are two of five suppliers.

Single-Use Tangential Flow Filtration Systems. These systems control the filtration process, which removes unwanted molecules during the cell growth by running liquids through porous membranes. Combined, Danaher and GE would have a significant portion of the market.

Label-Free Molecular Characterization Instruments. Researchers use these instruments for a number of bioprocessing applications, including drug discovery. Danaher and GE are significant competitors in this market. The remainder of the market is highly fragmented.

Further details about the consent agreement—which requires Danaher to supply the divested products to Sartorius for a limited time while Sartorius establishes its own manufacturing capability—are set forth in the analysis to aid public comment for this matter.

Commission staff and the staff of antitrust agencies in Brazil, China, the European Union, and Israel worked cooperatively to analyze the proposed transaction and potential remedies.

The Commission vote to issue the complaint and accept the proposed consent order for public comment was 3-2. Commissioners Rohit Chopra and Rebecca Kelly Slaughter voted no. The FTC will publish the consent agreement package in the Federal Register shortly. Instructions for filing comments appear in the published notice. Comments must be received 30 days after publication in the Federal Register. Once processed, comments will be posted on Regulations.gov.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to $43,280.

The Federal Trade Commission works to promote competition, and protect and educate consumers. You can learn more about how competition benefits consumers or file an antitrust complaint. Like the FTC on Facebook, follow us on Twitter, read our blogs, and subscribe to press releases for the latest FTC news and resources.

Contact Information

MEDIA CONTACT:
Betsy Lordan
Office of Public Affairs
202-326-3707

STAFF CONTACT:
Lisa DeMarchi Sleigh
Bureau of Competition
202-326-2535

ftc.gov

EXHIBIT 9

quinn emanuel trial lawyers | san francisco

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WRITER'S DIRECT DIAL NO.
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WRITER'S INTERNET ADDRESS
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July 7, 2020

Via E-Mail

Jennifer Sklenar
Arnold & Porter
601 Massachusetts Ave, NW
Washington, DC 20001-3743

Re: *GE Healthcare Bio-Sciences AB et al. v. Bio-Rad Laboratories, Inc.*, Case No. 1:18-cv-01899-CFC

Counsel:

We write to follow up regarding document requests made at the deposition of Nigel Darby.

First, we are entitled to documents Dr. Darby relied upon in preparing his declaration, which are also responsive to, among others, Bio-Rad's RFP Nos. 37 ("All documents supporting Your claims for damages, including but not limited to, all documents supporting Your claim for damages based on a reasonable royalty, lost profits, actual damages, or statutory damages.") and 38 ("All documents regarding any sale Plaintiffs allegedly lost because of the NGC system.") in the consolidated case. As Dr. Darby testified, these documents include documentary evidence regarding Shawn Anderson (Darby Rough Tr. at 117:9-19), document(s) supporting his $100 million estimate for the NextAKTA development expenses (*id.* at 119:2-9), and document(s) supporting his statements about lost sales (*id.* at 120:11-24). We have been unable to locate these documents in Plaintiffs' production. Please immediately produce these documents or identify by bates number where in the production they may be found.

Second, we are also entitled to documents related to the market for modular chromatography products, including, without limitation, market share and competitor data, that were submitted to government agencies as Dr. Darby testified to. *See id.* at 128:22-129:14, 134:11-135:5. These documents are responsive to, among others, Bio-Rad's RFP Nos. 64 ("Documents sufficient to show GE's market share in the market for modular preparative protein purification systems."), 66 ("Documents sufficient to show any efforts by GE to increase or maintain its market share in the market for modular preparative protein purification systems."), and 68 ("Documents sufficient to identify any companies that GE believes participate in the market for modular preparative market."). We have been unable to locate these documents in Plaintiffs' production.

Please immediately produce these documents or identify by bates number where in the production they may be found.

Best regards,

/s/ Felipe Corredor
Felipe Corredor